

<p style="text-align: right;">1</p> <p style="text-align: center;">VOLUME: I PAGES: 1-175 EXHIBITS: 3-32 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE NO. 1:14CV00475-SM</p> <hr/> <p>MAUREEN MCPADDEN, ) Plaintiff, ) vs. ) WAL-MART STORES EAST, L.P., ) Defendant. )  _____ )</p> <p style="text-align: center;">VIDEOTAPED DEPOSITION OF HEATHER HARRIS McCAFFREY, called as a witness by and on behalf of the Plaintiff, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before P. Jodi Ohnemus, RPR, RMR, CRR, CA-CSR #13192, NH-LCR #91, MA-CSR #123193, and RI Commissioner of Deeds, at the offices of Littler Mendelson, P.C., One Financial Plaza, Providence, Rhode Island, on Monday, November 9, 2015, commencing at 1:41 p.m.</p>	<p style="text-align: right;">3</p> <p>1 APPEARANCES: (CONT'D) 2 3 4 LITTLER MENDELSON, P.C. 5 BY: Christopher B. Kaczmarek, Esq. 6 One International Place 7 Boston, MA 02110 8 617 378-6017 9 Ckaczmarek@littler.com 10 For the Defendant 11 12 ALSO PRESENT: 13 14 Jason Martin, CLVS, Video Operator 15 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">2</p> <p>1 APPEARANCES: 2 3 BELIVEAU FRADETTE DOYLE &amp; GALLANT 4 BY: Richard E. Fradette, Esq. 5 91 Bay Street 6 PO Box 3150 7 Manchester, NH 03105-3150 8 603 623-1234 9 Rick@beliveau-fradette.com 10 -and- 11 UPTON &amp; HATFIELD, LLP 12 BY: Lauren Simon Irwin, Esq. 13 10 Centre Street 14 PO Box 1090 15 Concord, NH 03302-1090 16 603 224-7791 17 Lirwin@upton-hatfield.com 18 For the Plaintiff 19 20 21 22 23 24</p>	<p style="text-align: right;">4</p> <p>1 I N D E X 2 3 TESTIMONY OF: PAGE 4 5 HEATHER HARRIS McCAFFREY 6 7 (By Mr. Fradette) 8, 166 8 (By Mr. Kaczmarek) 131 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

5				7			
E X H I B I T S				VIDEO OPERATOR: We are now recording			
1	EXHIBIT	DESCRIPTION	PAGE	1	and on the record. My name is Jason Martin. I am		
2				2	a Certified Legal Video Specialist for National		
3				3	Video Reporters, Inc., in association with		
4	Exhibit P-5	email, 8/29/12	17	4	Kazcynski Reporting. Our business address is 7		
5	Exhibit P-6	email, 11/16/12, 2689-2690	18	5	Cedar Drive, Woburn, Massachusetts 01808.		
6	Exhibit P-7	job description, 3346	22	6	Today is November 9th, 2015. The time		
7	Exhibit P-8	Coaching for Improvement,	39	7	is 1:41 p.m. This is the deposition of Heather		
8		521-523		8	McCaffrey in the matter of Maureen McPadden,		
9	Exhibit P-9	McCaffrey affidavit, 4/30/15	42	9	Plaintiff, versus WalMart Stores East, LP,		
10	Exhibit P-10	Certo HRC interrogatory	45	10	Defendant, in the US District Court, District of		
11		answers, 9/27/13		11	New Hampshire, Case No. 14CV475-SM. This		
12	Exhibit P-11	USDC interrogatory answers,	51	12	deposition is being taken at One Financial Plaza,		
13		12/14/13		13	Providence, Rhode Island 02903. The court		
14	Exhibit P-12	Key and Door Control Policy,	58	14	reporter is Jodi Ohnemus of Kazcynski Reporting.		
15		172-179		15	Counsel will state their appearances,		
16	Exhibit P-13	POM-902, 483-490	60	16	and the court reporter will administer the oath.		
17	Exhibit P-14	Position Statement, 6/7/13	65	17	MR. FRADETTE: My name is Richard		
18	Exhibit P-15	Professional Accountability	67	18	Fradette. I appear here on behalf of the		
19		Matrix		19	Plaintiff with Attorney Lauren Irwin.		
20	Exhibit P-16	POM-206, 1461-1462	68	20	MR. KACZMAREK: My name is Chris		
21	Exhibit P-17	Maria Holder exit interview,	78	21	Kaczmarek. I represent the Defendant WalMart.		
22		792		22	HEATHER HARRIS MCCAFFREY, having		
23	Exhibit P-18	Susan Carroll exit	80	23	first been duly sworn, was		
24		interview, 614		24			
6				8			
1	Exhibit P-19	Shawn Wood email, 2907	85	1	examined and testified as		
2	Exhibit P-20	Jesse Slater email, 2833	88	2	follows to interrogatories		
3	Exhibit P-21	Don Wallis email, 2889	90	3	BY MR. FRADETTE:		
4	Exhibit P-22	Certo email, 2915	91	4	<b>Q. Good afternoon, Ms. McCaffrey. As we've spoken</b>		
5	Exhibit P-23	Certo email, 2913	92	5	<b>before, my name's Rick Fradette. I appear here</b>		
6	Exhibit P-24	previously marked	100	6	<b>for Ms. McPadden.</b>		
7	Exhibit P-25	previously marked	103	7	<b>Could you please state your name for the</b>		
8	Exhibit P-26	previously marked	103	8	<b>record.</b>		
9	Exhibit P-27	Varieur Annual Performance	109	9	A. Heather Harris McCaffrey.		
10		Evaluation, 1083-1087		10	<b>Q. And you are here today as a witness on behalf of</b>		
11	Exhibit P-28	Varieur coachings, 1154-1157	110	11	<b>WalMart; is that correct?</b>		
12	Exhibit P-29	Varieur decision to step	115	12	A. Yes.		
13		down, 1110		13	<b>Q. And you -- your current capacity is -- tell the</b>		
14	Exhibit P-30	Varieur demotion request,	115	14	<b>jury what your current capacity is.</b>		
15		6/29/13, 1107		15	A. I'm a market manager for Walmart Stores.		
16	Exhibit P-31	Varieur log-on violation	120	16	<b>Q. And this case involves the termination of Maureen</b>		
17		case detail, 1492-1502		17	<b>McPadden.</b>		
18	Exhibit P-32	Tau transfer approval,	127	18	<b>At the time of Ms. McPadden's</b>		
19		12/21/12, 2590		19	<b>termination in November 2012, what was your</b>		
20	Exhibit P-33	Tau coaching, 2624-2627	127	20	<b>position?</b>		
21	Exhibit P-3,	previously marked	128	21	A. I was a regional health and wellness director.		
22	Exhibit D-1	WALMART (C McPadden) 002676	131	22	<b>Q. So can you tell us when you graduated from</b>		
23				23	<b>pharmacy school?</b>		
24		(Exhibits retained by Attorney Fradette.)		24	A. May of 2004.		

<p style="text-align: right;">9</p> <p>1 Q. And what school was that?</p> <p>2 A. The University of Rhode Island.</p> <p>3 Q. And you went to work as a staff pharmacist for</p> <p>4 Walmart in Putnam, Connecticut; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you became the pharmacy manager of that store?</p> <p>7 A. No.</p> <p>8 Q. What -- did you ever serve as a pharmacy manager</p> <p>9 of a Walmart pharmacy?</p> <p>10 A. Yes.</p> <p>11 Q. Where was that?</p> <p>12 A. In Warwick, Rhode Island, and Coventry, Rhode</p> <p>13 Island.</p> <p>14 Q. The duties of a pharmacy manager are different</p> <p>15 than the duties of a staff pharmacist; correct?</p> <p>16 A. Yes.</p> <p>17 Q. But as it relates to the actual filling of</p> <p>18 prescriptions, the duties of a pharmacy manager</p> <p>19 and the duties of a staff pharmacist are</p> <p>20 essentially the same; correct?</p> <p>21 A. Correct.</p> <p>22 Q. You are not licensed to practice pharmacy in the</p> <p>23 State of New Hampshire; correct?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">11</p> <p>20 Q. And I understand that your training in management</p> <p>21 has been exclusively through your affiliation with</p> <p>22 Walmart; correct?</p> <p>23 A. Correct.</p> <p>24 Q. And that includes training on how to conduct an</p>
<p style="text-align: right;">10</p> <p>1 Q. And you never were?</p> <p>2 A. Correct.</p> <p>3 Q. And you actually practiced pharmacy -- that is,</p> <p>4 filling prescriptions for patients -- from 2004 to</p> <p>5 2008, approximately four years; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you no longer practice pharmacy since becoming</p> <p>8 a market director in November or December 2008?</p> <p>9 A. Correct.</p> <p>10 Q. You agree that for New Hampshire pharmacists, the</p> <p>11 New Hampshire pharmacist owes a duty to the</p> <p>12 patient not to practice under terms and conditions</p> <p>13 that would interfere with or impair a pharmacist's</p> <p>14 ability to exercise their professional judgment;</p> <p>15 correct?</p> <p>16 A. Any pharmacist.</p> <p>17 Q. You agree with that statement?</p> <p>18 A. Yes.</p>	<p style="text-align: right;">12</p> <p>1 investigation if an employee is suspected or</p> <p>2 reported to have violated Walmart policy.</p> <p>3 A. Correct.</p> <p>21 Q. And is it not the case that when considering</p> <p>22 whether to coach an employee, it's important to</p> <p>23 have all of the facts before making a decision.</p> <p>24 A. Yes.</p>

<p style="text-align: right;">13</p> <p>1 <b>Q. And it is also important that the investigator</b>  2 <b>document what they learn in the investigation;</b>  3 <b>correct?</b>  4 A. Yes.  5 <b>Q. And this would include any interviews of witnesses</b>  6 <b>in the investigation.</b>  7 A. Yes.  8 <b>Q. And we learned this morning that when an</b>  9 <b>investigation is done, the investigator actually</b>  10 <b>has a witness with them to conduct the</b>  11 <b>investigation; correct?</b>  12 A. They should; yes.  13 <b>Q. And so it should be two members of management</b>  14 <b>involved in an investigation of a complained or</b>  15 <b>reported violation of Walmart policy.</b>  16 A. Yes.  17 <b>Q. And you agree that if it's not documented -- the</b>  18 <b>investigation or the interview -- that means</b>  19 <b>essentially that the individual investigator will</b>  20 <b>not be able to prove that what was alleged to have</b>  21 <b>happened actually happened.</b>  22 A. No. I stated this morning, if the witness was  23 there as well, we could talk to both of them.  24 <b>Q. Okay. But you would document -- either a note or</b></p>	<p style="text-align: right;">15</p> <p>1 <b>the jury -- but as we sit here today, do you have</b>  2 <b>an independent recollection of Maureen McPadden?</b>  3 A. I met her a few times on some store tours that I  4 d d, but I never really had any interact ons other  5 than that with her; no.  6 <b>Q. So it's fair for the jury to conclude that you did</b>  7 <b>not supervise Ms. McPadden; correct?</b>  8 A. No.  9 <b>Q. And you did not and cannot really assess her</b>  10 <b>effectiveness as a pharmacist; correct?</b>  11 A. Correct.  12 <b>Q. And you don't recall having any criticisms of Ms.</b>  13 <b>McPadden; correct?</b>  14 A. Not me personally; no.  15 <b>Q. Now, is it my understanding that the pharmacist's</b>  16 <b>personnel file and history with the company are</b>  17 <b>not factors in making a decision with respect to</b>  18 <b>coaching?</b>  19 <b>Is that your testimony?</b>  20 A. Can you repeat that.  21 <b>Q. Sure. When you're making a decision about whether</b>  22 <b>or not to coach a person -- an employee, is it not</b>  23 <b>your testimony that the pharmacist's personnel</b>  24 <b>file and history with the company are not factors</b></p>
<p style="text-align: right;">14</p> <p>1 <b>an email -- but some evidence of having that</b>  2 <b>conversation with that witness; correct?</b>  3 A. I would assume so.  4 <b>Q. You would expect so?</b>  5 A. Assume.  6 <b>Q. Okay.</b>  7 <b>Is that your experience; that you would,</b>  8 <b>in fact, have either an email or your own personal</b>  9 <b>notes or some type of writing about what you</b>  10 <b>learned in your investigation?</b>  11 A. That's how I would conduct -- conduct it.  12 <b>Q. And you've learned that documentation is a very</b>  13 <b>important part of doing an investigation; correct?</b>  14 A. It's a part of it; yes.  15 <b>Q. And it's important when making coaching</b>  16 <b>decisions -- particularly decisions that involve</b>  17 <b>termination -- that you document an investigation;</b>  18 <b>correct?</b>  19 A. It's part of the investigat on. I don't know how  20 important I would rate it --  21 <b>Q. Okay.</b>  22 A. -- but it's part of the investigat on.  23 <b>Q. Okay. As we sit here today -- and we're not sure</b>  24 <b>exactly when your testimony will be presented to</b></p>	<p style="text-align: right;">16</p> <p>1 <b>considered in making the decision?</b>  2 A. The only time that would be a factor is if they  3 had done the same offense previously.  4 <b>Q. All right. How -- I'm trying to understand that</b>  5 <b>testimony.</b>  6 <b>How would you know if they had done the</b>  7 <b>same offense previously if you didn't look at</b>  8 <b>their personnel file?</b>  9 A. It would be based on what was presented to me by  10 the market director.  11 <b>Q. All right. All right.</b>  12 <b>So your experience with respect to</b>  13 <b>decisions about coaching is that you do not review</b>  14 <b>the pharmacist's personnel file or history with</b>  15 <b>the company.</b>  16 A. Correct.  17 <b>Q. Now, specific to this case, I think you testified</b>  18 <b>that it is a serious matter if a market director</b>  19 <b>is placed on written notice of a concern for</b>  20 <b>patient safety; correct?</b>  21 A. Correct.  22 <b>Q. You would want to know that there were concerns</b>  23 <b>about a patient's safety; correct?</b>  24 A. Correct.</p>

<p style="text-align: right;">17</p> <p>1 <b>Q. You would expect that the market director would</b>  2 <b>make you aware of concerns raised about patient</b>  3 <b>safety; correct?</b>  4 A. They should.  5 <b>Q. They should?</b>  6 A. They don't have to. They manage their own market,  7 but I would suspect they would.  8 <b>Q. Yeah. And I think you testified that patient</b>  9 <b>safety is Walmart's No. 1 priority at all times.</b>  10 A. Yes.  11 <b>Q. Now, I'm going to show you, actually, what's been</b>  12 <b>marked as Plaintiffs' Exhibit No. 5, and that is</b>  13 <b>an email dated August 29th, 2012, from Ms.</b>  14 <b>McPadden to Mr. Certo.</b>  15 <b>(Exhibit P-5, email, 8/29/12.)</b>  16 <b>Q. You have never seen that email prior to the</b>  17 <b>deposition involved in this case; correct?</b>  18 A. Correct.</p>	<p style="text-align: right;">19</p> <p>1 <b>November 16th, 2012; is that correct?</b>  2 A. Yes.  3 <b>Q. And prior to this -- the deposition that I took of</b>  4 <b>you back in August, you had not previously seen</b>  5 <b>this email; correct?</b>  6 A. I don't believe so.</p>
<p style="text-align: right;">18</p> <p>17 <b>Q. Now, what's been marked as exhibit -- Plaintiffs'</b>  18 <b>Exhibit No. 6 -- I'm sorry.</b>  19 <b>Could I have that back, No. 6. I'm</b>  20 <b>sorry.</b>  21 <b>(Exhibit P-6, email, 11/16/12,</b>  22 <b>2689-2690.)</b>  23 <b>Q. No. 6 is an email. And this one is also from Ms.</b>  24 <b>McPadden to Mr. Certo; and this one's dated</b></p>	<p style="text-align: right;">20</p> <p>20 <b>Q. And just, again, so we're clear, it's not her job,</b>  21 <b>as a staff pharmacist, to staff the pharmacy.</b>  22 <b>That's the pharmacy manager's job;</b>  23 <b>correct?</b>  24 A. Not necessarily.</p>

<p style="text-align: right;">21</p> <p>1 <b>Q. The pharmacy manager isn't specifically</b>  2 <b>responsible for hiring and training technicians?</b>  3 A. Staff pharmacists can do that as well.  4 <b>Q. They can hire?</b>  5 A. They're a member of -- yeah. They're a member of  6 management.  7 <b>Q. So it's your testimony that a staff pharmacist</b>  8 <b>like Maureen McPadden can hire a technician?</b>  9 A. Yes, they could.  10 <b>Q. Mr. Certo responds to Ms. McPadden's email by</b>  11 <b>saying -- and if you look at his response, it says</b>  12 <b>"Sent out communications to Rochester, Portsmouth,</b>  13 <b>and Epping. Please reach out to them."</b>  14 <b>Did I read that correctly?</b>  15 A. Yes.  16 <b>Q. And now Mr. Certo is essentially telling Ms.</b>  17 <b>McPadden to try and find support staff from some</b>  18 <b>other Walmart pharmacy.</b>  19 A. That's what it looks like.  20 <b>Q. And then Ms. McPadden responds that "It is very,</b>  21 <b>very bad here. Vicky may leave. Pam and Debbie</b>  22 <b>are barely holding it together. This is a very</b>  23 <b>bad situation in this pharmacy right now."</b>  24 <b>Did I read that correctly?</b></p>	<p style="text-align: right;">23</p> <p>1 <b>company policies to ensure the safety and</b>  2 <b>well-being of patients."</b>  3 <b>Did I read that correctly?</b>  4 A. Yes.  5 <b>Q. And that -- you did consider that to be part of</b>  6 <b>your job?</b>  7 A. Yes.  8 <b>Q. Continuing to read in that paragraph. A little</b>  9 <b>further on, it says that you "oversee safety,</b>  10 <b>operational and quality assurance."</b>  11 <b>Is that through all of the pharmacies</b>  12 <b>that you're responsible for?</b>  13 A. I would oversee all pharmacies that I'm  14 responsible for.  15 <b>Q. And then it encourages you, as part of your job,</b>  16 <b>to "develop and ensure implementation of best</b>  17 <b>practices to ensure patient safety"; correct?</b>  18 A. I don't see where you're reading that.  19 <b>Q. In that same paragraph.</b>  20 A. Yes.  21 <b>Q. And at the very end of that same paragraph, it</b>  22 <b>reads that you should "ensure training and</b>  23 <b>guidance on the execution of company procedures</b>  24 <b>and policies"; right?</b></p>
<p style="text-align: right;">22</p> <p>1 A. Yes.  2 <b>Q. And did you -- were you ever made aware of this</b>  3 <b>circumstance at the time?</b>  4 A. I don't recall if I was made aware of this  5 specific circumstance.  6 <b>Q. Okay. Did Mr. Certo ever report to you at the</b>  7 <b>time that the staffing was -- there were</b>  8 <b>complaints about understaffing at this particular</b>  9 <b>store?</b>  10 A. At one point when I had the store, we -- we had  11 staffing opportunities in the store. But  12 throughout the time that I had that store, we  13 actually overstaffed the store to help them.  14 <b>Q. I'm going to show you what's now been marked as</b>  15 <b>Plaintiffs' Exhibit No. 7.</b>  16 <b>(Exhibit P-7, job description, 3346.)</b>  17 <b>Q. And that is the regional health and wellness</b>  18 <b>director job description.</b>  19 <b>That's essentially your position at the</b>  20 <b>time; correct?</b>  21 A. Yes.  22 <b>Q. On that very first page -- say about halfway</b>  23 <b>down -- it says that you "oversee compliance with</b>  24 <b>applicable state, federal, and local laws and</b></p>	<p style="text-align: right;">24</p> <p>1 A. Yes.  2 <b>Q. And, then, on the next page, the second paragraph,</b>  3 <b>as a regional director you're responsible to</b>  4 <b>oversee investigations and ensure "reports of</b>  5 <b>health and welfare policy violations are</b>  6 <b>appropriately investigated"; is that correct?</b>  7 A. Where do you see that?  8 I don't see that specifically.  9 <b>Q. It says in the second paragraph, it says "Oversees</b>  10 <b>investigations."</b>  11 <b>Do you see that?</b>  12 A. Yup.  13 <b>Q. And it says "ensures reports of health and welfare</b>  14 <b>policy and procedure violations are properly</b>  15 <b>investigated."</b>  16 <b>Is it -- do you see that?</b>  17 A. Yes.  18 <b>Q. That would be part of your job?</b>  19 A. Yes.  20 <b>Q. And Mr. Certo in this instance was the market</b>  21 <b>director for the seacoast -- the Seabrook -- I'm</b>  22 <b>sorry -- Seabrook pharmacy; and so he would be</b>  23 <b>under your supervision; correct?</b>  24 A. Correct.</p>

<p style="text-align: right;">25</p> <p>1 <b>Q. And that you're to "monitor the progression of the</b></p> <p>2 <b>investigation and ensure appropriate action is</b></p> <p>3 <b>taken at the conclusion of the investigation";</b></p> <p>4 <b>correct?</b></p> <p>5 A. Correct.</p> <p>6 <b>Q. And then you're to "ensure appropriate</b></p> <p>7 <b>communication with and training for the region and</b></p> <p>8 <b>market associates to prevent potential</b></p> <p>9 <b>violations"; correct?</b></p> <p>10 A. Correct.</p> <p>11 <b>Q. That's all part of your job description.</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. And that would include investigations into a</b></p> <p>14 <b>violation of a HIPAA policy; correct?</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. And it would include a potential violation of an</b></p> <p>17 <b>FMLA policy; correct?</b></p> <p>18 A. I probably wouldn't be involved in an FMLA</p> <p>19 situation as a regional health and wellness</p> <p>20 director.</p> <p>21 <b>Q. And -- and that is because what would happen to</b></p> <p>22 <b>the investigation of a potential FMLA policy?</b></p> <p>23 <b>What would you do?</b></p> <p>24 A. I would refer that to an HR -- that wouldn't be</p>	<p style="text-align: right;">27</p> <p>1 pharmacy.</p> <p>2 <b>Q. I'm sorry. Vision center employees in the store.</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. And there were two to five employees per vision</b></p> <p>5 <b>center?</b></p> <p>6 A. At least. There could be much more than that.</p> <p>7 <b>Q. And -- and how many vision centers do you have?</b></p> <p>8 A. I think I had somewhere around -- maybe 65. I</p> <p>9 can't remember exactly off the top of my head.</p> <p>10 <b>Q. And just so the jury understands, when you</b></p> <p>11 <b>corrected me about it's not in the -- vision</b></p> <p>12 <b>center's not in the pharmacy, there's a</b></p> <p>13 <b>distinction within Walmart that separates the</b></p> <p>14 <b>pharmacy and the rest of the store; correct?</b></p> <p>15 A. We are a separate division.</p> <p>16 <b>Q. It's an entirely separate division.</b></p> <p>17 A. Correct.</p> <p>18 <b>Q. When you say, We are an entirely separate</b></p> <p>19 <b>division, you mean the pharmacy is entirely</b></p> <p>20 <b>separate division?</b></p> <p>21 A. Pharmacy and vision center is a separate division.</p> <p>22 <b>Q. And that division is identified as health and</b></p> <p>23 <b>wellness?</b></p> <p>24 A. Yes.</p>
<p style="text-align: right;">26</p> <p>1 something that I would handle.</p> <p>2 <b>Q. HR in Bentonville?</b></p> <p>3 A. HR -- yeah. Probably I would talk to the</p> <p>4 divisional HR.</p> <p>5 <b>Q. Okay. Just so the jury has an appreciation for</b></p> <p>6 <b>your role, there are approximately 4,200 stores --</b></p> <p>7 <b>Walmart pharmacies -- in 2012; is that correct?</b></p> <p>8 A. Approximately.</p> <p>9 <b>Q. And I understand there were anywhere from three to</b></p> <p>10 <b>ten pharmacists per store?</b></p> <p>11 A. That's -- that's accurate; yeah.</p> <p>12 <b>Q. And as a regional manager, you were responsible</b></p> <p>13 <b>for 112 pharmacies?</b></p> <p>14 A. I believe I had 110 at that time.</p> <p>15 <b>Q. And, you know, say 110, depending on whether it's</b></p> <p>16 <b>three pharmacies or -- I'm sorry -- three</b></p> <p>17 <b>pharmacists or ten pharmacists, essentially you're</b></p> <p>18 <b>responsible for 6, 7, 800 -- any large number of</b></p> <p>19 <b>pharmacists; correct?</b></p> <p>20 A. Correct.</p> <p>21 <b>Q. And, then, you were also responsible for the</b></p> <p>22 <b>employees at the vision centers of all of these</b></p> <p>23 <b>pharmacies?</b></p> <p>24 A. Vision center employees wouldn't be in the</p>	<p style="text-align: right;">28</p> <p>17 <b>You were involved in the promotion of</b></p> <p>18 <b>Mr. Certo to the market director position in 2012;</b></p> <p>19 <b>correct?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. And, in fact, he was promoted for the first time</b></p> <p>22 <b>essentially by you; right?</b></p> <p>23 A. To what position?</p> <p>24 <b>Q. To the market director position.</b></p>

<p style="text-align: right;">29</p> <p>1 A. Yes.</p> <p>2 <b>Q. And that was in April of 2012?</b></p> <p>3 A. I don't remember exactly.</p> <p>4 <b>Q. Do you know that -- whether the Seabrook pharmacy</b></p> <p>5 <b>district -- wherever Seabrook pharmacy district</b></p> <p>6 <b>happens to be -- was his first assignment as a</b></p> <p>7 <b>market director?</b></p> <p>8 A. It was, I believe.</p> <p>9 <b>Q. Okay. And I believe you testified that you had</b></p> <p>10 <b>the most influence on Mr. Certo being promoted to</b></p> <p>11 <b>regional director; correct?</b></p> <p>12 A. I was his only regional health and wellness</p> <p>13 director at the time.</p> <p>14 <b>Q. So I interpret that to be correct. You had the</b></p> <p>15 <b>influence in getting him promoted to be the</b></p> <p>16 <b>regional director.</b></p> <p>17 A. I helped train him.</p> <p>18 <b>Q. Okay. Did you recommend him for the position?</b></p> <p>19 A. I wasn't in health and wellness when he was</p> <p>20 promoted. The hiring manager did ask if I felt</p> <p>21 that he was ready, and I did say I thought he was.</p> <p>22 <b>Q. Okay. And Mr. Certo, do you know how long he had</b></p> <p>23 <b>been a pharmacy manager before he was promoted to</b></p> <p>24 <b>regional -- district manager or market manager?</b></p>	<p style="text-align: right;">31</p> <p>1 <b>Q. And, generally speaking, you don't personally</b></p> <p>2 <b>terminate pharmacists; correct?</b></p> <p>3 A. Correct.</p> <p>4 <b>Q. Now, both as a market director and as a regional</b></p> <p>5 <b>manager, would you agree that you are trained in</b></p> <p>6 <b>the following areas: You are trained on the ADA;</b></p> <p>7 <b>correct?</b></p> <p>8 A. Correct.</p> <p>9 <b>Q. You are trained on the FMLA.</b></p> <p>10 A. I wasn't necessarily trained on FMLA. It was</p> <p>11 based on my experience that I dealt with</p> <p>12 situations that I learned about it.</p> <p>13 <b>Q. Okay. You were trained on Title VII gender</b></p> <p>14 <b>discrimination and the laws that prohibit gender</b></p> <p>15 <b>discrimination; correct?</b></p> <p>16 A. Again, I don't believe we had specific Title VII</p> <p>17 training. So, no, I can't say I've had specific</p> <p>18 Title VII training.</p> <p>19 <b>Q. Do you know that it is unlawful to discriminate</b></p> <p>20 <b>against an individual in the terms and conditions</b></p> <p>21 <b>of their employment based on their gender?</b></p> <p>22 A. Yes. We don't discriminate against anyone at</p> <p>23 Walmart for any reason.</p> <p>24 <b>Q. You were trained -- either directly or</b></p>
<p style="text-align: right;">30</p> <p>1 A. I don't know exactly.</p> <p>2 <b>Q. But we agree that managers gain experience and</b></p> <p>3 <b>they get better at their job as time goes on;</b></p> <p>4 <b>right?</b></p> <p>5 A. Everyone gets better with experience.</p> <p>6 <b>Q. Incidentally, Mr. Certo also is a graduate of URI;</b></p> <p>7 <b>correct?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. And Mr. Certo, as a market director, has authority</b></p> <p>10 <b>to make disciplinary decisions; correct?</b></p> <p>11 A. Correct.</p> <p>12 <b>Q. And Mr. Certo could have decided on his own</b></p> <p>13 <b>whether to issue a one-level coaching or not</b></p> <p>14 <b>involving Ms. McPadden; correct?</b></p> <p>15 A. He could have.</p> <p>16 <b>Q. And he didn't have to consult you to make that</b></p> <p>17 <b>decision; correct?</b></p> <p>18 A. He didn't have to; no.</p> <p>19 <b>Q. And I understand that you participate in decisions</b></p> <p>20 <b>to discipline or terminate pharmacists when it's</b></p> <p>21 <b>not black and white or when the market director</b></p> <p>22 <b>raises the issue to your attention; correct?</b></p> <p>23 A. Correct. When they have questions, they would</p> <p>24 come to me.</p>	<p style="text-align: right;">32</p> <p>1 <b>indirectly -- on New Hampshire's equivalent</b></p> <p>2 <b>antidiscrimination laws; correct?</b></p> <p>3 A. No. I was not trained on any specific New</p> <p>4 Hampshire laws.</p> <p>5 <b>Q. Would you understand that New Hampshire would</b></p> <p>6 <b>similarly have laws that prohibit discrimination</b></p> <p>7 <b>based on either disability, gender, race, or any</b></p> <p>8 <b>other protected class?</b></p> <p>9 A. Yeah. At Walmart, we don't discriminate against</p> <p>10 anyone for any reason.</p> <p>11 <b>Q. Do you know what "protected class" means?</b></p> <p>12 A. I do.</p> <p>13 <b>Q. What do you understand that to mean?</b></p> <p>14 A. Any -- there's different protected classes: so</p> <p>15 medical. It could be physical. It could be -- a</p> <p>16 lot of different things.</p> <p>17 <b>Q. Could be emotional?</b></p> <p>18 A. Could be.</p> <p>19 <b>Q. Psychological?</b></p> <p>20 A. Uh-huh.</p> <p>21 <b>Q. I'm sorry?</b></p> <p>22 A. That would be medical.</p> <p>23 <b>Q. Okay. You were trained on H-I-P-A-A, the Health</b></p> <p>24 <b>Insurance Portability and Accountability Act;</b></p>



<p style="text-align: right;">33</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. You were trained that it's wrong to terminate an</p> <p>4 employee because of a whistleblower or the concept</p> <p>5 involving whistleblowers.</p> <p>6 A. Yes.</p> <p>7 Q. And you understand that Walmart cannot lawfully</p> <p>8 retaliate against an employee for raising safety</p> <p>9 concerns within the pharmacy; correct?</p> <p>10 A. Yes.</p> <p>11 Q. I'm sorry?</p> <p>12 A. Yes.</p> <p>13 Q. And you understand that Walmart cannot lawfully</p> <p>14 retaliate against an employee for raising a HIPAA</p> <p>15 violation; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you understand that Walmart cannot lawfully</p> <p>18 retaliate against an employee because she</p> <p>19 requested FMLA, or used FMLA, or because she may</p> <p>20 need FMLA in the future; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And I believe we established that -- this morning</p> <p>23 -- you would consider it to be an adverse action</p> <p>24 if you took action against an employee --</p>	<p style="text-align: right;">35</p> <p>1 a coaching; correct?</p> <p>2 A. Correct. But given that he was new and that he</p> <p>3 wanted to make sure that he was doing the right</p> <p>4 thing, that -- he conferred with me very</p> <p>5 frequently.</p> <p>6 Q. You agree that an adverse action would include</p> <p>7 escalating an event -- or raising an event to</p> <p>8 upper management unnecessarily; correct?</p> <p>9 A. It could be.</p> <p>10 Q. And then I think you agreed this morning that an</p> <p>11 adverse action would include seeking or imposing a</p> <p>12 more severe discipline because the employee had</p> <p>13 used FMLA; correct?</p> <p>14 A. Correct.</p> <p>15 Q. And you understand that Walmart cannot fire an</p> <p>16 employee because of her disability if she can</p> <p>17 perform the essential functions of the job;</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. You understand that Walmart cannot discipline a</p> <p>21 female pharmacist more harshly than a male</p> <p>22 pharmacist with respect to discipline for the same</p> <p>23 conduct; correct?</p> <p>24 A. Correct.</p>
<p style="text-align: right;">34</p> <p>1 disciplinary action against an employee for an</p> <p>2 event that would not otherwise be a disciplinary</p> <p>3 event; correct?</p> <p>4 A. Correct.</p> <p>5 Q. And the example I used -- or we used -- was if an</p> <p>6 employee inadvertently puts my prescription in</p> <p>7 another customer's bag and the customer opens it</p> <p>8 and sees my prescription, technically that's a</p> <p>9 violation of HIPAA; right?</p> <p>10 A. Yes.</p> <p>11 Q. But because it was an inadvertent or unintentional</p> <p>12 oversight, that may not discipline -- it may not</p> <p>13 result in disciplinary action; correct?</p> <p>14 A. Correct.</p> <p>15 Q. And Mr. Certo has the judgment to decide whether</p> <p>16 or not to issue discipline on any given fact</p> <p>17 pattern; correct?</p> <p>18 A. No. We have the accountability matrix that's very</p> <p>19 specific about things that have to be held --</p> <p>20 people held to the same standard. But that's,</p> <p>21 again, why they would confer with me to make sure</p> <p>22 that we're consistent throughout the region.</p> <p>23 Q. My question, though, is Mr. Certo doesn't have to</p> <p>24 consult with you to make a decision about issuing</p>	<p style="text-align: right;">36</p> <p>1 Q. So if the real reason that a manager wanted a</p> <p>2 pharmacist to be fired or disciplined was because</p> <p>3 he was tired of her safety complaints or her use</p> <p>4 of FMLA or because she had a disability, that</p> <p>5 would be unlawful; right?</p> <p>6 A. Can you repeat the question.</p> <p>7 Q. If the real reason that a manager wanted a</p> <p>8 pharmacist to be fired was because he was tired of</p> <p>9 her raising safety complaints or her use of</p> <p>10 FMLA -- either past or present or future -- or</p> <p>11 because she had a disability, that would be</p> <p>12 unlawful.</p> <p>13 A. If that was the true reason for terminat on; yes.</p> <p>14 Q. Ms. Kulwicki is a name that the jury will become</p> <p>15 familiar with.</p> <p>16 I understand that she is an HR person in</p> <p>17 Bentonville; is that correct?</p> <p>18 A. She's in Bentonville now. She was not at the</p> <p>19 time.</p> <p>20 Q. Oh. She was in Philadelphia?</p> <p>21 A. She was in Philadelphia.</p> <p>22 Q. And we learned this morning that you have used her</p> <p>23 as a resource for HR issues as far back as 2007.</p> <p>24 A. Yes.</p>

<p style="text-align: right;">37</p> <p>1 <b>Q. And, in fact, you consulted her in the decision to</b>  2 <b>discipline pharmacist McPadden, Ms. McPadden;</b>  3 <b>correct?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Her role was, as an HR person, to make sure that</b>  6 <b>Walmart policies and state and federal laws were</b>  7 <b>being followed; correct?</b></p> <p>8 A. She was a divisional HR. So she had a broader  9 spectrum on consistency within the company for  10 accountability.</p> <p>11 <b>Q. Was she also responsible or part of her</b>  12 <b>responsible -- responsibilities were to make sure</b>  13 <b>that Walmart policies and state and federal laws</b>  14 <b>were being followed?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. She has -- I'm sorry.</b>  17 <b>And you would consult her before making</b>  18 <b>any decisions relative to terminating a</b>  19 <b>pharmacist; correct?</b></p> <p>20 A. No. I d dn't have to consult her.</p> <p>21 <b>Q. Could you take a look at page 75 of your</b>  22 <b>deposition.</b>  23 <b>And I will call your attention</b>  24 <b>specifically to lines 7 through 13. And I ask in</b></p>	<p style="text-align: right;">39</p> <p>1 <b>Did I read that correctly?</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. So you conferred and would not have issued the</b>  4 <b>discipline on your own; correct?</b></p> <p>5 A. In this circumstance.</p> <p>6 <b>Q. Okay.</b></p> <p>7 A. I don't have to confer w th her.</p> <p>8 <b>Q. Okay. And you have no knowledge of what Ms.</b>  9 <b>Kulwicki reviewed when you were on the telephone</b>  10 <b>call with her that day; correct?</b></p> <p>11 A. Correct.</p> <p>12 <b>Q. Now, I want to talk about the actual decision that</b>  13 <b>was made in this case to issue a coaching to Ms.</b>  14 <b>McPadden.</b>  15 <b>You would agree with me that coaching</b>  16 <b>decisions include many factors that could include</b>  17 <b>the intent of the individual or the level of the</b>  18 <b>offense; correct?</b></p> <p>19 A. Correct.</p> <p>20 <b>Q. And there's coaching, which has been marked as</b>  21 <b>Exhibit No. 8...</b>  22 <b>(Exhibit P-8, Coaching for Improvement,</b>  23 <b>521-523.)</b>  24 <b>Q. ...is a tool that you use -- and other Walmart</b></p>
<p style="text-align: right;">38</p> <p>1 <b>your deposition: "Do you have a definite</b>  2 <b>recollection that the telephone call occurred?"</b>  3 <b>And you say you do.</b>  4 <b>Do you see that?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And here we're talking about the fact that you</b>  7 <b>have no notes of the telephone call that you had</b>  8 <b>with Ms. McCaffrey [verbatim] and Mr. Certo on the</b>  9 <b>day that the decision was made to discipline Ms.</b>  10 <b>McPadden; correct?</b></p> <p>11 A. You mean Ms. Kulwicki?</p> <p>12 <b>Q. No, you, Ms. McCaffrey, as the regional director,</b>  13 <b>you have no notes of the telephone call that</b>  14 <b>occurred between yourself, Ms. Kulwicki, and Mr.</b>  15 <b>Certo where the decision was made to discipline</b>  16 <b>Ms. McPadden.</b></p> <p>17 A. Correct.</p> <p>18 <b>Q. Yeah. So I'm asking you -- but you have a</b>  19 <b>definite recollection that the call occurred.</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. And I ask you why. And you say "Because I</b>  22 <b>remember talking about it with Barb, coming up</b>  23 <b>with the accountability. I wouldn't do it on my</b>  24 <b>own."</b></p>	<p style="text-align: right;">40</p> <p>1 <b>managers -- use to ostensibly improve performance;</b>  2 <b>right?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. And it's actually called "Coaching for</b>  5 <b>Improvement"; right?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. Have you ever heard it referred to as anything</b>  8 <b>other than "Coaching for Improvement"?</b></p> <p>9 A. No.</p> <p>10 <b>Q. And as I understand this policy within Walmart,</b>  11 <b>it's an opportunity to "identify, acknowledge, and</b>  12 <b>change unacceptable performance or conduct"; is</b>  13 <b>that true?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. And it also, again, ostensibly, is used as a means</b>  16 <b>of retaining employees who demonstrate a</b>  17 <b>"interest, ability, and desire to be successful."</b>  18 <b>Did I read that correctly?</b></p> <p>19 A. I don't know where you're reading t from.</p> <p>20 <b>Q. In that second full paragraph at the last</b>  21 <b>sentence. "It enables us to retain those</b>  22 <b>associates who demonstrate the interest, ability,</b>  23 <b>and desire to be successful."</b></p> <p>24 A. Yes.</p>

<p style="text-align: right;">41</p> <p>1 <b>Q. Now, with respect to Ms. McPadden, she had always</b>  2 <b>expressed an interest and an ability and a desire</b>  3 <b>to remain an employee with Walmart; correct?</b>  4 MR. KACZMAREK: Objection.  5 A. I don't know.  6 <b>Q. Have you ever interviewed Ms. McPadden?</b>  7 A. No.  8 <b>Q. This Coaching for Improvement goes on to say that</b>  9 <b>"The supervisor manager determines the appropriate</b>  10 <b>level of coaching, depending on the</b>  11 <b>circumstances."</b>  12 <b>Is that your experience as well?</b>  13 A. Yes.  14 <b>Q. We agree that termination is the most severe</b>  15 <b>consequence of a Coaching for Improvement; right?</b>  16 A. Yes.  17 <b>Q. And I think you testified this morning that an</b>  18 <b>employee's intent is important in making</b>  19 <b>disciplinary decisions; correct?</b>  20 A. Usually.  21 <b>Q. And an inadvertent policy violation may result in</b>  22 <b>no coaching; correct?</b>  23 A. Depending on the situat on.  24 <b>Q. Okay. I think I made reference to this just a</b></p>	<p style="text-align: right;">43</p> <p>1 <b>Q. And you consider that to be your -- your sworn</b>  2 <b>testimony under oath?</b>  3 A. It -- t must be. It's not signed by me, but I'm  4 assuming this is what I gave.  5 <b>Q. Okay. And you've reviewed it carefully.</b>  6 A. I reviewed it.  7 <b>Q. Now, as I understand it from reading this</b>  8 <b>affidavit, you received an email from Mr. Certo</b>  9 <b>in -- sometime in late November; right?</b>  10 A. Yes.  11 <b>Q. You have no recollection of time of day that you</b>  12 <b>received the email; correct?</b>  13 A. Correct.  14 <b>Q. You did not answer the email in writing; correct?</b>  15 A. Correct.  16 <b>Q. You convened a telephone call between yourself,</b>  17 <b>Mr. Certo, and Ms. Kulwicki?</b>  18 A. At some point.  19 <b>Q. At some point that day.</b>  20 A. I don't recall if t was that day or the next day.  21 <b>Q. Okay. And I understand that you don't recall the</b>  22 <b>time of day that the call was made; correct?</b>  23 A. Correct.  24 <b>Q. In fact, you don't even recall whether Mr. Certo</b></p>
<p style="text-align: right;">42</p> <p>1 <b>moment ago, but you have no notes, no emails, or</b>  2 <b>any other records explaining the decision made to</b>  3 <b>issue a two-level coaching to Ms. McPadden on</b>  4 <b>November 26, 2012; correct?</b>  5 A. Correct.  6 <b>Q. What's been marked now as Exhibit No. 9 is your</b>  7 <b>affidavit that was prepared in connection with</b>  8 <b>this case.</b>  9 <b>Do you recognize that document?</b>  10 <b>(Exhibit P-9, McCaffrey affidavit,</b>  11 <b>4/30/15.)</b>  12 A. (Witness reviews document.) Could be; yeah. I  13 don't know.  14 <b>Q. Is that your signature? Actually, it's --</b>  15 A. There's no signature.  16 <b>Q. Okay. Well, I -- I don't want the jury to get --</b>  17 <b>you know, be misled or anything.</b>  18 <b>That is produced.</b>  19 <b>Is that a document that you have seen</b>  20 <b>before?</b>  21 <b>Take your time to review it to make</b>  22 <b>sure.</b>  23 A. (Witness reviews document.) Yeah. This is the  24 information that I would have prov ded.</p>	<p style="text-align: right;">44</p> <p>1 <b>participated in the call?</b>  2 A. Correct.  3 <b>Q. But you have seen his testimony under oath that he</b>  4 <b>was on that call; correct?</b>  5 A. I don't know if I've seen his testimony.  6 <b>Q. Well, you would not dispute Certo's testimony that</b>  7 <b>he was on the call?</b>  8 A. If he says he was on the call, I'm sure he was on  9 the call.  10 <b>Q. Okay. And you also don't know how long the call</b>  11 <b>lasted.</b>  12 A. No.  13 <b>Q. And there was only one conference call; correct?</b>  14 A. As far as I can remember.  15 <b>Q. And you would not dispute Mr. Certo's sworn</b>  16 <b>testimony before the human rights commission that</b>  17 <b>he was one of the persons ultimately responsible</b>  18 <b>in making the decision to terminate Ms. McPadden;</b>  19 <b>correct?</b>  20  21 A. If he was on the phone with us, he could have been  22 part of the conversat on. I don't recall if he  23 was or was not.  24 <b>Q. I'm going to show you -- excuse me -- what's</b></p>

<p style="text-align: right;">45</p> <p>1       <b>marked as Plaintiff's Exhibit No. 10.</b></p> <p>2               <b>(Exhibit P-10, Certo HRC interrogatory</b></p> <p>3               <b>Answers, 9/27/13.)</b></p>	<p style="text-align: right;">47</p> <p>1       A.   Okay.</p> <p>2       <b>Q.   -- that interrogatory asks that Mr. Certo</b></p> <p>3       <b>identify -- or, actually, Walmart -- identify the</b></p> <p>4       <b>name -- "full name, title, business address, phone</b></p> <p>5       <b>number, and email address of persons ultimately</b></p> <p>6       <b>responsible for making the decision to terminate</b></p> <p>7       <b>the complainant."</b></p> <p>8               <b>Did I read that correctly?</b></p> <p>9       A.   Yes.</p> <p>10      <b>Q.   And the response is to "See interrogatory response</b></p> <p>11      <b>No. 14: The individuals named in response to</b></p> <p>12      <b>interrogatory No. 14 may be contacted through</b></p> <p>13      <b>counsel"; correct?</b></p> <p>14      A.   Yes.</p> <p>15      <b>Q.   Now, let's look at interrogatory No. 14, and that</b></p> <p>16      <b>actually appears on page 11.</b></p> <p>17              <b>Do you see that?</b></p> <p>18      A.   Yes.</p> <p>19      <b>Q.   And about halfway paper down it reads: "Subject</b></p> <p>20      <b>to and without waiving the foregoing objections</b></p> <p>21      <b>and the general objections set forth above,</b></p> <p>22      <b>Respondents states that Joe Certo, market health</b></p> <p>23      <b>and wellness director, Heather Harris McCaffrey,</b></p> <p>24      <b>health and wellness regional manager --" which</b></p>
<p style="text-align: right;">46</p> <p>6               <b>And page 14 -- the second page 14 -- has</b></p> <p>7               <b>a date September 27th, 2013, with Mr. Certo's</b></p> <p>8               <b>signature.</b></p> <p>9               <b>And do you recognize that as Mr. Certo's</b></p> <p>10              <b>signature?</b></p> <p>11      A.   I wouldn't be able to recognize Joe's signature.</p> <p>12      <b>Q.   You've never seen it before?</b></p> <p>13      A.   I probably have not seen his signature before.</p> <p>14      <b>Q.   Why? You've been working with him for over 10</b></p> <p>15      <b>years, and you've never seen his signature?</b></p> <p>16      A.   I haven't been working with him for 10 years. And</p> <p>17      I wouldn't have some -- I don't know somebody's</p> <p>18      signature from another one.</p> <p>19      <b>Q.   Okay. All right.</b></p> <p>20              <b>Well, let me represent to you that it's</b></p> <p>21      <b>been represented to me, anyway, under oath, Mr.</b></p> <p>22      <b>Certo signed these interrogatories. And if you go</b></p> <p>23      <b>to No. 18, which is on page 13 -- and there's only</b></p> <p>24      <b>one page 13 --</b></p>	<p style="text-align: right;">48</p> <p>1               <b>would be you "-- and Barbara Kulwicki, senior</b></p> <p>2               <b>resource professional, conferred and determined</b></p> <p>3               <b>that pursuant to Walmart's policies, Ms.</b></p> <p>4               <b>McPadden's employment should be terminated on</b></p> <p>5               <b>November 27th, after she admitted losing her keys</b></p> <p>6               <b>while on a second written coaching."</b></p> <p>7              <b>Did I read that correctly?</b></p> <p>8      A.   Yes.</p> <p>9      <b>Q.   So Mr. Certo, anyways, believes that he was both</b></p> <p>10      <b>on the call in which the decision to issue that</b></p> <p>11      <b>discipline that resulted in her termination was</b></p> <p>12      <b>made; correct?</b></p> <p>14      A.   It doesn't say that here.</p> <p>15      <b>Q.   It says that he, as well as you and Ms. Kulwicki,</b></p> <p>16      <b>"conferred and determined"; correct?</b></p> <p>17      A.   It doesn't mean we conferred all together.</p> <p>18      <b>Q.   Was there ever a time when the three of you</b></p> <p>19      <b>conferred together, other than in the telephone</b></p> <p>20      <b>conference call?</b></p> <p>21      A.   No. Like I sa d, I don't remember if Joe was on</p> <p>22      the phone.</p> <p>23      <b>Q.   Is there any response in this interrogatory that</b></p> <p>24      <b>suggests the conferring occurred on a day other</b></p>

<p style="text-align: right;">49</p> <p>1 <b>than the 26th of November --</b></p> <p>2 MR. KACZMAREK: Objection.</p> <p>3 <b>Q. -- resulting in a termination on the 27th of</b></p> <p>4 <b>November?</b></p> <p>5 A. It could have been done on another day. I don't</p> <p>6 know when t was taking place.</p> <p>7 <b>Q. Well, you do agree that Ms. McPadden lost her key</b></p> <p>8 <b>on the 26th of November 2012.</b></p> <p>9 A. I don't -- if that's the date, I don't recall.</p> <p>10 But it could be the date.</p> <p>11 <b>Q. I'm sorry.</b></p> <p>12 A. That could be the date.</p> <p>13 <b>Q. And she was terminated on the 27th of November.</b></p> <p>14 <b>Do you recall that?</b></p> <p>15 A. I don't remember the exact date of her</p> <p>16 termination.</p> <p>17 <b>Q. Now, your affidavit -- I'm sorry.</b></p> <p>18 <b>You can put that one away and take your</b></p> <p>19 <b>affidavit back, please, which is the previous one.</b></p> <p>20 A. (W tness reviews document.)</p> <p>21 <b>Q. Yeah. That affidavit makes no reference to the</b></p> <p>22 <b>key and control -- key and door control policy,</b></p> <p>23 <b>AP-05; correct?</b></p> <p>24 A. (W tness reviews document.) I'd have to read</p>	<p style="text-align: right;">51</p> <p>1 <b>(Exhibit P-11, USDC interrogatory</b></p> <p>2 <b>answers, 12/14/13.)</b></p> <p>3 A. My personal answers?</p> <p>4 <b>Q. Correct.</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. So in regards to -- let me just make sure.</b></p> <p>7 <b>Can you show that? Is that the United</b></p> <p>8 <b>States District Court?</b></p> <p>9 A. (Indicating.)</p> <p>10 <b>Q. It is. Okay.</b></p> <p>11 <b>At the very top it says "United States</b></p> <p>12 <b>District Court, State of New Hampshire"; correct?</b></p> <p>13 A. "District of New Hampshire."</p> <p>14 <b>Q. "District of New Hampshire."</b></p> <p>15 <b>At page 3, interrogatory response No. 1,</b></p> <p>16 <b>you are identified, along with Mr. Certo and Ms.</b></p> <p>17 <b>McCaffrey, as at least three of the individuals --</b></p> <p>18 <b>I'm sorry -- Kulwicki -- as three of the</b></p> <p>19 <b>individuals responsible for providing answers</b></p> <p>20 <b>to -- or helping in providing answers to these</b></p> <p>21 <b>interrogatories; correct?</b></p> <p>22 A. Yeah.</p> <p>23 <b>Q. And if you go to page 27 -- and hopefully this</b></p> <p>24 <b>time your page 27 is the same as mine.</b></p>
<p style="text-align: right;">50</p> <p>1 through it.</p> <p>2 <b>Q. Take your time.</b></p> <p>3 A. (W tness reviews document.) No, it doesn't.</p> <p>4 <b>Q. So your affidavit doesn't make reference to the</b></p> <p>5 <b>key -- the AP-05 -- we'll refer to it as AP-05;</b></p> <p>6 <b>correct?</b></p> <p>7 A. Correct.</p> <p>8 <b>Q. And your affidavit does not make reference to the</b></p> <p>9 <b>prescription area security policy POM-902;</b></p> <p>10 <b>correct?</b></p> <p>11 A. Correct.</p> <p>12 <b>Q. And your affidavit does not make reference to the</b></p> <p>13 <b>Professional Accountability Matrix; correct?</b></p> <p>14 A. Correct.</p> <p>15 <b>Q. In fact, your affidavit only refers to -- as it</b></p> <p>16 <b>relates to what you considered when making the</b></p> <p>17 <b>decision to discipline -- a vision center manager</b></p> <p>18 <b>who lost her key and was terminated at paragraph</b></p> <p>19 <b>7; correct?</b></p> <p>20 A. Correct.</p> <p>21 <b>Q. Now, Exhibit No. 11 is interrogatory answers. And</b></p> <p>22 <b>I'll call your attention to -- well, let me first</b></p> <p>23 <b>ask you: Have you reviewed the -- your answers to</b></p> <p>24 <b>interrogatories?</b></p>	<p style="text-align: right;">52</p> <p>1 A. (Indicating.)</p> <p>2 <b>Q. -- that has Mr. Certo's signature under oath, but</b></p> <p>3 <b>you don't recognize his signature?</b></p> <p>4 A. I couldn't recognize his signature.</p> <p>5 <b>Q. But you don't dispute -- if Mr. Certo says that</b></p> <p>6 <b>that's his signature, you would go with Mr. Certo</b></p> <p>7 <b>testimony?</b></p> <p>8 A. I would believe him.</p> <p>9 <b>Q. All right. You would believe him.</b></p> <p>10 <b>And with respect to specifically now</b></p> <p>11 <b>these interrogatories, go to interrogatory No. 22,</b></p> <p>12 <b>please, which is on page 21.</b></p> <p>13 <b>Are you there?</b></p> <p>14 A. My 21 isn't labeled.</p> <p>15 <b>Q. Oh. At the bottom. Okay.</b></p> <p>16 <b>But at the very top, do you see</b></p> <p>17 <b>"Interrogatory No. 22"?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. It asks "for each reason the Plaintiff was</b></p> <p>20 <b>terminated and for each reason the policy or</b></p> <p>21 <b>policies materially related to the reason, and</b></p> <p>22 <b>then identify any other policies that might have</b></p> <p>23 <b>been violated."</b></p> <p>24 <b>Do you see that?</b></p>

<p style="text-align: right;">53</p> <p>1 A. Yes.</p> <p>2 <b>Q. Okay. And, then, if you go to the answer, about</b></p> <p>3 <b>halfway down, again, it says "Defendant refers</b></p> <p>4 <b>Plaintiff to Defendant's Coaching for Improvement</b></p> <p>5 <b>policy."</b></p> <p>6 <b>And we've reviewed that; right?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. And then it talks about Defendant's policy "AP-05,</b></p> <p>9 <b>key and door control policy."</b></p> <p>10 <b>Do you see that?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. And it talks about Plaintiff's exit interview;</b></p> <p>13 <b>correct?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. Then the answer says "These policies speak for</b></p> <p>16 <b>themselves."</b></p> <p>17 <b>Did I read that correctly?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. And these would be the policies -- is it your</b></p> <p>20 <b>testimony that these would be the policies relied</b></p> <p>21 <b>upon in making the decision to discipline and then</b></p> <p>22 <b>ultimately terminate Ms. McPadden?</b></p> <p>24 A. No.</p>	<p style="text-align: right;">55</p> <p>1 <b>MS. IRWIN: 9.</b></p> <p>2 <b>Q. -- is Exhibit No. 9.</b></p> <p>3 A. (Witness reviews document.)</p> <p>4 (Counsel confer.)</p> <p>5 A. I don't see a quest on asking me what we</p> <p>6 referenced in here. So I don't have t referenced</p> <p>7 in here.</p> <p>8 <b>Q. In that affidavit, you're explaining how the</b></p> <p>9 <b>decision was made to discipline and then to</b></p> <p>10 <b>ultimately terminate Ms. McPadden; correct?</b></p> <p>11 A. Correct.</p> <p>12 <b>Q. And it does not make reference to an</b></p> <p>13 <b>accountability matrix; does it?</b></p> <p>14 A. No.</p> <p>15 <b>Q. And it does not make reference to POM-902; does</b></p> <p>16 <b>it?</b></p> <p>18 A. No.</p> <p>19 <b>Q. And in interrogatories that we just showed you,</b></p> <p>20 <b>which has been marked as Exhibit 10, interrogatory</b></p> <p>21 <b>No. 22, which you participated in providing</b></p> <p>22 <b>answers, does not make reference to the</b></p> <p>23 <b>accountability matrix -- Professional</b></p> <p>24 <b>Accountability Matrix; does it?</b></p>
<p style="text-align: right;">54</p> <p>1 <b>Q. Okay. But that's what this interrogatory says;</b></p> <p>2 <b>right?</b></p> <p>4 A. That's what you just read me.</p> <p>5 <b>Q. Okay. The interrogatory answer No. 22 does not</b></p> <p>6 <b>make reference to POM-902; correct -- prescription</b></p> <p>7 <b>area security?</b></p> <p>8 A. Correct.</p> <p>9 <b>Q. And it does not make reference to a Professional</b></p> <p>10 <b>Accountability Matrix; does it?</b></p> <p>11 A. Not that I see.</p> <p>12 <b>Q. But you were involved in providing the answers to</b></p> <p>13 <b>these interrogatories, correct?</b></p> <p>15 <b>Q. At least it says so in answer to No. 1.</b></p> <p>16 A. These are not the interrogatories that I signed.</p> <p>17 We read through the ones that I signed.</p> <p>18 <b>Q. That was your affidavit.</b></p> <p>19 A. Or my aff dav t.</p> <p>20 <b>Q. Right. But your affidavit didn't make reference</b></p> <p>21 <b>to the accountability matrix; did it?</b></p> <p>23 A. What exhibit is that?</p> <p>24 <b>Q. Your affidavit is --</b></p>	<p style="text-align: right;">56</p> <p>2 A. I have to read through Exhibit 10 completely. I</p> <p>3 don't know if it's in here. I mean, that's 27</p> <p>4 pages.</p> <p>5 <b>Q. Well, look, how about interrogatory -- just</b></p> <p>6 <b>interrogatory No. 22, which asks for the specific</b></p> <p>7 <b>policies?</b></p> <p>8 A. Are you talking about Exhibit 10 or 11?</p> <p>12 <b>Q. I'm sorry. 11. Thank you.</b></p> <p>13 A. No. 22 does not talk about those two.</p> <p>14 <b>Q. About a matrix or 902.</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. If Mr. Certo signs under oath that you</b></p> <p>17 <b>participated in providing the answers to these</b></p> <p>18 <b>interrogatories, are you disputing that?</b></p> <p>20 A. No.</p> <p>21 <b>Q. All right. It is clear -- at least from my</b></p> <p>22 <b>reading of the responses -- that you are</b></p> <p>23 <b>identified as providing assistance in answering</b></p> <p>24 <b>these interrogatories.</b></p>

<p style="text-align: right;">57</p> <p>1           <b>Is that your reading of No. -- the</b>  2           <b>question to No. 1, that you provided assistance in</b>  3           <b>answering these interrogatories?</b>  4       A.    Quest on No. 1?  5            (Witness reviews document.) Yes. It  6            references me.  7       <b>Q.    So it's -- it's appropriate for me to rely on you</b>  8           <b>participating in providing answers to these</b>  9           <b>interrogatories.</b>  10      A.    I believe so.  11      <b>Q.    All right. Now, I think you testified that with</b>  12           <b>respect to AP-05, the key and door control policy,</b>  13           <b>you have no idea why that policy was produced,</b>  14           <b>period; is that true?</b>  15      A.    Correct.  16      <b>Q.    It certainly was not relied upon, from your</b>  17           <b>perspective, in making the decision to discipline</b>  18           <b>and then ultimately terminate Ms. McPadden;</b>  19           <b>correct?</b>  20      A.    Correct.  21      <b>Q.    And you actually have no idea why it was produced.</b>  22      A.    Correct.  23      <b>Q.    Because this policy has been produced as a policy</b>  24           <b>-- I'm going to show it to you; it's policy No. 12</b></p>	<p style="text-align: right;">59</p> <p>1       A.    I don't.  2       <b>Q.    But it has been produced by Walmart as a policy in</b>  3           <b>the decision to terminate; correct?</b>  4       A.    I believe so.  5       <b>Q.    And had you referred to this policy, which is a</b>  6           <b>Walmart policy, you would have seen that -- at</b>  7           <b>least in terms of auditing where keys are, the</b>  8           <b>lost key is specifically excepted.</b>  9           <b>You don't have to worry about it.</b>  10          <b>Do you see that?</b>  11       A.    No. It doesn't call out pharmacy specific. It  12            calls out all the departments on here  13            specifically, and pharmacy is not one of them. In  14            fact, it calls out pharmacy separately.  15       <b>Q.    Okay. So let's go then to POM-902, recognizing</b>  16           <b>that AP-05 -- it is your testimony -- is not</b>  17           <b>relied upon -- let me ask, just to clarify before</b>  18           <b>I move off AP-05: That was not -- AP-05 -- a real</b>  19           <b>reason for the violation of that policy, anyways,</b>  20           <b>is not, in your opinion, a real reason why Ms.</b>  21           <b>McPadden was disciplined and then terminated;</b>  22           <b>correct?</b>  23       A.    Correct.  24       <b>Q.    Now, let's go to 902, which, if you could take a</b>  25           <b>look at that one -- and that's marked as No. 13.</b>  26           <b>This, again, was produced by Walmart.</b>  27           <b>And I believe your testimony is that you don't</b>  28           <b>recall if you actually physically pulled POM-902,</b>  29           <b>but you may have referenced it during the decision</b>  30           <b>in 2012; correct?</b>  31           <b>(Exhibit P-13, POM-902, 483-490.)</b>  32       A.    I'm very familiar with this POM. I wouldn't need  33            to pull it to be able to reference it.  34       <b>Q.    So you're sufficiently familiar with the POM --</b>  35           <b>meaning P-O-M -- you wouldn't need to look at it.</b>  36       A.    Correct.  37       <b>Q.    And you agree that 902 -- POM-902 -- does not</b>  38           <b>specifically state that losing a key is a policy</b>  39           <b>violation; right?</b>  40       A.    It speaks to the pharmacy keys, who can have the  41            keys on them; and it speaks to overall security of  42            the pharmacy area and what would happen if that  43            was to be violative of the policy.  44       <b>Q.    And when it speaks to the pharmacy keys, you're</b>  45           <b>referring there to page 4 of 8; correct?</b>  46       A.    Yes.</p>
<p style="text-align: right;">58</p> <p>1           <b>-- I mean, Exhibit No. 12 -- it's the key and door</b>  2           <b>control's policy, AP-05. And if you could turn to</b>  3           <b>the third page of 8 -- and I understand and</b>  4           <b>appreciate that you did not rely on this policy</b>  5           <b>and didn't even look at the policy at the time the</b>  6           <b>decision was made with respect to disciplining Ms.</b>  7           <b>McPadden for accidentally losing her key; correct?</b>  8      A.    Correct.  9            (Exhibit P-12, Key and Door Control  10            Policy, 172-179.)  11      <b>Q.    Page 3, when you're auditing keys and their</b>  12           <b>whereabouts, specifically excepts from an audit a</b>  13           <b>lost key.</b>  14           <b>Do you see that under "Key Audit Form:</b>  15           <b>Exceptions"?</b>  16      A.    This policy is not pertaining to health and  17            wellness.  18      <b>Q.    Does it say that somewhere?</b>  19      A.    It's not a POM, which would be pharmacy. This is  20            AP, which has to do with division 1.  21      <b>Q.    And is the pharmacy within division 1?</b>  22      A.    No.  23      <b>Q.    Do you have any idea why this -- I think you</b>  24           <b>testified you don't know why it was produced.</b></p>	<p style="text-align: right;">60</p> <p>1       A.    Correct.  2       <b>Q.    Now, let's go to 902, which, if you could take a</b>  3           <b>look at that one -- and that's marked as No. 13.</b>  4           <b>This, again, was produced by Walmart.</b>  5           <b>And I believe your testimony is that you don't</b>  6           <b>recall if you actually physically pulled POM-902,</b>  7           <b>but you may have referenced it during the decision</b>  8           <b>in 2012; correct?</b>  9           <b>(Exhibit P-13, POM-902, 483-490.)</b>  10      A.    I'm very familiar with this POM. I wouldn't need  11            to pull it to be able to reference it.  12      <b>Q.    So you're sufficiently familiar with the POM --</b>  13           <b>meaning P-O-M -- you wouldn't need to look at it.</b>  14      A.    Correct.  15      <b>Q.    And you agree that 902 -- POM-902 -- does not</b>  16           <b>specifically state that losing a key is a policy</b>  17           <b>violation; right?</b>  18      A.    It speaks to the pharmacy keys, who can have the  19            keys on them; and it speaks to overall security of  20            the pharmacy area and what would happen if that  21            was to be violative of the policy.  22      <b>Q.    And when it speaks to the pharmacy keys, you're</b>  23           <b>referring there to page 4 of 8; correct?</b>  24      A.    Yes.</p>



<p style="text-align: right;">61</p> <p>1 <b>Q. And that subheading is "Pharmacy Keys." And it</b>  2 <b>talks about pharmacists keeping the key on their</b>  3 <b>person at all times. And then it explains what</b>  4 <b>happens in the event of a lost key; correct?</b>  5 A. Correct.  6 <b>Q. And in the event of a lost key, the MHWD and AP</b>  7 <b>are to be contacted to review key handling</b>  8 <b>procedures, change the locks, and distribute new</b>  9 <b>keys; correct?</b>  10 A. Correct.  11 <b>Q. And it's your information from Mr. Certo that Ms.</b>  12 <b>McPadden, in fact, contacted him -- and he's the</b>  13 <b>MHWD; right?</b>  14 A. Yes.  15 <b>Q. And AP -- or asset protection -- was contacted as</b>  16 <b>well; right?</b>  17 A. I believe so.  18 <b>Q. And the key -- or locks were rekeyed; the pharmacy</b>  19 <b>locks were rekeyed that very day; correct?</b>  20 A. I believe so.  21 <b>Q. And new keys were distributed that very day;</b>  22 <b>correct?</b>  23 A. I believe so.  24 <b>Q. So, essentially, this procedure was followed by</b></p>	<p style="text-align: right;">63</p> <p>1 <b>Q. So the policy, POM-902, actually talks about what</b>  2 <b>it takes to secure the pharmacy on page 1.</b>  3 <b>Do you see that?</b>  4 A. What are you referencing?  5 <b>Q. It says "Pharmacist's Duty"; and it has five</b>  6 <b>bullet points. And it talks about "Whenever there</b>  7 <b>is not a pharmacist present in the pharmacy, the</b>  8 <b>prescription area must be secured."</b>  9 <b>Do you see that?</b>  10 A. Yes.  11 <b>Q. And securing the pharmacies says "Relocate the</b>  12 <b>will-call bin to the inside of the</b>  13 <b>prescription-filling area; Ensure that all</b>  14 <b>associates vacate the prescription area; Close and</b>  15 <b>lock all pharmacy windows and doors; Ensure the</b>  16 <b>prescription-filling area lights are on"; and</b>  17 <b>"Ensure that the pharmacy alarm is set."</b>  18 <b>Did I read that correctly?</b>  19 A. Yes.  20 <b>Q. Those five bullet points, if they have been met or</b>  21 <b>complied with, then the pharmacy is secure,</b>  22 <b>correct, by this policy?</b>  23 A. Well, if you don't have your key, then anyone  24 could unlock the door that has the key. So then</p>
<p style="text-align: right;">62</p> <p>1 <b>Ms. McPadden; correct?</b>  2 A. Yeah. I mean, it was followed by who needed to  3 follow the procedures.  4 <b>Q. Okay. And I think you testified that the policy</b>  5 <b>itself doesn't say, one way or the other, that</b>  6 <b>losing a key is a violation of POM-902; right?</b>  7 A. I don't believe we found that specifically. It  8 just does state...  9 (Witness reviews document.) Where is  10 it?  11 It says "All associates and managers are  12 required to comply with the guidelines, policies,  13 and procedures related to prescription area  14 security" -- which losing your key would not keep  15 an area secure -- "Violations are subject to  16 disciplinary action, up to and including  17 termination, as outlined in the corporate Coaching  18 for Improvement policy."  19 <b>Q. You kind of tucked in there a little editorial;</b>  20 <b>and that is -- I will call it an editorial -- that</b>  21 <b>accidentally losing a key creates unsecure</b>  22 <b>circumstances.</b>  23 <b>Is that your -- is that your testimony?</b>  24 A. Yes.</p>	<p style="text-align: right;">64</p> <p>1 that would be --  2 <b>Q. And set the alarm, and then the alarm would go off</b>  3 <b>if somebody tried to unlock the door with the</b>  4 <b>alarm set; correct?</b>  5 A. Well, you still have time before someone can  6 respond to an alarm.  7 <b>Q. Incidentally, the key itself is not identifiable</b>  8 <b>or there's no unique characteristics; right?</b>  9 <b>If I found a key that had been lost, I</b>  10 <b>wouldn't pick it up and say, This belongs to</b>  11 <b>Seabrook pharmacy in Seabrook, New Hampshire?</b>  12 A. I don't know what the key looked like that they  13 had.  14 <b>Q. In your experience, are these keys identifiable?</b>  15 A. Depends. Somebody could put a marking on it that  16 could identify it. I don't know what the key had  17 on it.  18 <b>Q. So we'd have to conclude that the key -- in order</b>  19 <b>for somebody so pick it up and drive over to the</b>  20 <b>Seabrook pharmacy -- that the key had a little</b>  21 <b>mark on it that says this is the pharmacy key that</b>  22 <b>will open Seabrook pharmacy? Is that --</b>  23 A. Well --  24 <b>Q. Is that what you're -- is that your concern?</b></p>



<p style="text-align: right;">65</p> <p>1 A. No. The key says not duplicatable. And if I knew 2 where someone worked, t's not too hard to figure 3 out with wh ch key is a pharmacy key, based on 4 what they look like.</p> <p>5 <b>Q. But this policy, as far as Walmart's policy for 6 what defines securing the pharmacy, these five 7 bullet points are what Walmart's written policy is 8 to secure the pharmacy; correct?</b></p> <p>9 A. That's what t says right there.</p> <p>10 <b>Q. Now, as I understand it, you did not investigate 11 beyond Mr. Certo telling you that Maureen had 12 accidentally lost her key; correct?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. And I'm going to show you what's been marked as 15 Plaintiffs' Exhibit No. 14. 16 (Exhibit P-14, Position Statement, 17 6/7/13.)</b></p> <p>18 <b>Q. If you go to page 3 of that document, this is -- 19 again, this is a document presented to the human 20 rights commission.</b></p> <p>24 <b>Q. And, actually, here, again, if you go to the last</b></p>	<p style="text-align: right;">67</p> <p>1 A. He told me she was moving and could not locate her 2 keys.</p> <p>3 <b>Q. Okay. So he didn't mention that she had the keys 4 as recent as that day before, within the previous 5 24 hours?</b></p> <p>6 A. It really d dn't matter.</p> <p>7 <b>Q. Okay. Now, it's my understanding that you believe 8 that you referred to what's been marked as Exhibit 9 15, the Professional Accountability Matrix, when 10 investigating whether Maureen's accidental loss of 11 her key was a policy violation. 12 Is that your testimony? 13 (Exhibit P-15, Professional 14 Accountability Matrix.)</b></p> <p>15 A. Can you repeat that?</p> <p>16 <b>Q. Sure. I understand it's your testimony that you 17 relied on or referred to Exhibit No. 15, the 18 health and wellness Professional Accountability 19 Matrix when the making the decision to discipline 20 Ms. McPadden because she accidentally lost her key 21 and that that was a policy violation?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. And that policy, No. -- Exhibit No. 15, was first 24 produced -- this matrix was first produced the day</b></p>
<p style="text-align: right;">66</p> <p>1 page, that is a verification by Mr. Certo that, 2 "To the extent that I, Joe Certo, have personal 3 knowledge of such facts, I hereby certify and 4 affirm that such facts are true and accurate to 5 the best of my knowledge." And that is Mr. 6 Certo's signature. 7 If he said that's his signature, you're 8 going to go with what he says.</p> <p>9 A. If he says so.</p> <p>10 <b>Q. And at page 3, the very last paragraph -- and, 11 actually, the last couple of sentences -- Mr. 12 Certo reports to the human rights commission that 13 he called Ms. McPadden and asked how it 14 happened -- the loss of her key. 15 "Ms McPadden said that she was moving 16 and thought her keys fell somewhere at her house. 17 Ms. McPadden told him that she had the keys on 18 Sunday, and now couldn't find them, and that was 19 Monday." 20 Do you see that?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. So did Mr. Certo tell you that Ms. McPadden had 23 her keys on the Sunday prior to the Monday morning 24 when she went to unlock the pharmacy?</b></p>	<p style="text-align: right;">68</p> <p>1 before your deposition; August 26, 2015; is that 2 correct?</p> <p>3 A. Yes.</p> <p>4 <b>Q. This matrix actually has a POM associated with it, 5 POM-206, which is now marked as 16. 6 Have you reviewed the POM-206? 7 (Exhibit P-16, POM-206, 1461-1462.)</b></p> <p>8 A. No.</p> <p>9 <b>Q. You haven't reviewed that?</b></p> <p>10 A. Not today.</p> <p>11 <b>Q. Do you agree that this Professional Accountability 12 Matrix guidelines is a Walmart policy that was in 13 effect in November 2012?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. So it would be a policy that you would have to 16 follow.</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. And if you look at the definition of the 19 professional accountability matrix guideline, it 20 talks about -- and I'll read it -- "As a licensed 21 professional and/or member of management, it is 22 your responsibility to monitor, identify, and 23 report any activity that is suspected to violate 24 state or federal healthcare law or regulation or</b></p>



<p style="text-align: right;">73</p> <p>1 <b>creates an unsecure pharmacy; right?</b></p> <p>2 A. Well, we don't have a policy for everything that</p> <p>3 happens.</p> <p>4 <b>Q. All right.</b></p> <p>5 A. We have to be able to make some sort of call based</p> <p>6 on the situation.</p> <p>7 <b>Q. And in No. 11, what they're really talking about</b></p> <p>8 <b>there is when the pharmacy is still open and there</b></p> <p>9 <b>are technicians in the pharmacy and potentially</b></p> <p>10 <b>customers having access to the pharmacy.</b></p> <p>11 <b>But that pharmacy is still open, and</b></p> <p>12 <b>that's why you can't leave -- the pharmacist can't</b></p> <p>13 <b>leave beyond visual sight of the pharmacy.</b></p> <p>14 <b>Isn't that the intent of No. 11?</b></p> <p>15 A. It doesn't say that. That's your assumption.</p> <p>16 <b>Q. Well, it does say -- I'm sorry?</b></p> <p>17 A. That's your assumption. It doesn't say that at</p> <p>18 all.</p> <p>19 <b>Q. It does say "Unsecured means leaving visible sight</b></p> <p>20 <b>of the pharmacy."</b></p> <p>21 <b>It says that right there.</b></p> <p>22 A. That doesn't mean it has to be open.</p> <p>23 The pharmacy wouldn't be open after</p> <p>24 business hours.</p>	<p style="text-align: right;">75</p> <p>1 that we need to keep our pharmacy secure.</p> <p>2 <b>Q. And the matrix -- and with respect to keeping it</b></p> <p>3 <b>secure, we established that Walmart's policy,</b></p> <p>4 <b>anyways, in writing, has those five bullet points</b></p> <p>5 <b>for what creates a secure pharmacy; right?</b></p> <p>6 A. But that's not all encompassing --</p> <p>7 <b>Q. All right.</b></p> <p>8 A. -- encompassing.</p> <p>9 <b>Q. I understand that now, although I wouldn't have by</b></p> <p>10 <b>just reading the policy.</b></p> <p>11 <b>And, then, when we look at Exhibit 15,</b></p> <p>12 <b>again, by just reading the policy, you would</b></p> <p>13 <b>expect for a first offense of accidentally losing</b></p> <p>14 <b>your key, assuming that violates No. 11, to have a</b></p> <p>15 <b>coaching, a one-level or next-level coaching; is</b></p> <p>16 <b>that correct?</b></p> <p>18 A. No.</p> <p>19 <b>Q. Subject to, of course, it could be more if there</b></p> <p>20 <b>were some circumstances that warranted it being</b></p> <p>21 <b>more.</b></p> <p>22 A. Well, no. The reason why it was a second level</p> <p>23 was because we had a similar situation within the</p> <p>24 region previously with a vision center manager.</p>
<p style="text-align: right;">74</p> <p>1 <b>Q. All right. But even say No. 11, the first offense</b></p> <p>2 <b>for No. 11 -- if you assume loading a key violates</b></p> <p>3 <b>No. 11, first offense is a coaching; right?</b></p> <p>4 A. It doesn't have to be.</p> <p>5 <b>Q. Well, isn't that what is recommended?</b></p> <p>6 A. It could be. But if you read down below, it says</p> <p>7 that "Each infraction will be reviewed</p> <p>8 independently and the level of discipline imposed</p> <p>9 may vary from the first offense column" on the</p> <p>10 chart.</p> <p>11 <b>Q. Where are you reading, 'cause --</b></p> <p>12 A. The fine print on the bottom.</p> <p>13 <b>Q. Oh, yeah. I don't know -- let me see. I have to</b></p> <p>14 <b>take my glasses off for that.</b></p> <p>15 A. "This list is not all inclusive, and associates</p> <p>16 may be disciplined for any reason not consistent</p> <p>17 with applicable laws and company policy."</p> <p>18 <b>Q. All right. So by reading POM-206, we can agree</b></p> <p>19 <b>that it's intended to enforce -- the matrix,</b></p> <p>20 <b>anyways, and the policy -- is intended to enforce</b></p> <p>21 <b>the laws, rules, and regulations and any policies</b></p> <p>22 <b>related to laws, rules, and regulations with</b></p> <p>23 <b>respect to healthcare; right?</b></p> <p>24 A. Right. And like I stated before, it is a -- a law</p>	<p style="text-align: right;">76</p> <p>1 So to be consistent, we went with the two levels.</p> <p>2 <b>Q. Okay. We'll get to the vision center person</b></p> <p>3 <b>eventually.</b></p> <p>4 <b>But I -- I just want to make sure that</b></p> <p>5 <b>from reading this policy as it -- 'cause that</b></p> <p>6 <b>vision center person is not a pharmacist; right?</b></p> <p>7 A. Correct.</p> <p>8 <b>Q. And the coaching -- for the Professional</b></p> <p>9 <b>Accountability Matrix guidelines anyways --</b></p> <p>10 <b>involves "licensed professionals."</b></p> <p>11 <b>Pharmacists are licensed; right?</b></p> <p>12 A. Opticians are licensed too.</p> <p>13 <b>Q. Okay. Are opticians or vision center managers</b></p> <p>14 <b>licensed?</b></p> <p>15 A. She was.</p> <p>16 <b>Q. Oh. This particular one?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. All right. But, again, getting back to that No.</b></p> <p>19 <b>11, we can agree that there's still alarm that</b></p> <p>20 <b>secures the pharmacy; right?</b></p> <p>21 A. But you -- anybody can -- once you open a door,</p> <p>22 the alarm doesn't matter.</p> <p>23 <b>Q. All right. But there is an alarm at the pharmacy;</b></p> <p>24 <b>right?</b></p>

<p style="text-align: right;">77</p> <p>1 A. There is.</p> <p>2 <b>Q. And there's video surveillance of the pharmacy as</b></p> <p>3 <b>well; correct?</b></p> <p>4 A. There is.</p> <p>5 <b>Q. And there is a lock on the store, correct, the</b></p> <p>6 <b>whole store.</b></p> <p>7 <b>If the store is closed, you can't get</b></p> <p>8 <b>into the pharmacy; right?</b></p> <p>9 A. Well, I don't know if this is a 24-hour -- I don't</p> <p>10 remember if this was a 24-hour store.</p> <p>11 <b>Q. And there's surveillance cameras throughout the</b></p> <p>12 <b>store as well.</b></p> <p>13 A. There is.</p> <p>14 <b>Q. Yeah. And just to make certain, you never made</b></p> <p>15 <b>inquiry of Ms. McPadden to ascertain whether or</b></p> <p>16 <b>not -- how this lost of the key occurred.</b></p> <p>17 <b>She's been practicing for over 15, 20</b></p> <p>18 <b>years. She'd been with Walmart for 13 years in</b></p> <p>19 <b>four or five different states. You never made</b></p> <p>20 <b>inquiry whether she had ever lost her key before.</b></p> <p>21 <b>None of that factored into the decision</b></p> <p>22 <b>of issuing a two-level discipline when you made</b></p> <p>23 <b>that decision; correct?</b></p> <p>24 A. Correct.</p>	<p style="text-align: right;">79</p> <p>1 <b>Q. In your opinion, it was not?</b></p> <p>2 A. It was not.</p> <p>3 <b>Q. And in the case of Ms. Holder, if you look under</b></p> <p>4 <b>the "Manager Comments," she was actually</b></p> <p>5 <b>disciplined for not reporting the missing key.</b></p> <p>6 <b>Did I read that correctly?</b></p> <p>7 A. She's an electronics associate. So this has</p> <p>8 nothing to do with the pharmacy.</p> <p>9 <b>Q. I understand that, but, again, to be consistent,</b></p> <p>10 <b>if you want -- I mean, if a key is not reported as</b></p> <p>11 <b>having been missed -- having been lost, rather,</b></p> <p>12 <b>would you discipline an electronics employee</b></p> <p>13 <b>different than a pharmacy employee or a vision</b></p> <p>14 <b>center employee?</b></p> <p>15 A. I had no jurisdiction over the rest of the store</p> <p>16 at that point. It was specifically health and</p> <p>17 wellness.</p> <p>18 <b>Q. All right. But, in any event, Maria did not</b></p> <p>19 <b>report the loss of a key, and she ends up being</b></p> <p>20 <b>terminated because "her next level of coaching is</b></p> <p>21 <b>termination, since she was already on a decision</b></p> <p>22 <b>day."</b></p> <p>23 <b>Did I read that correctly?</b></p> <p>24 A. Yes.</p>
<p style="text-align: right;">78</p> <p>1 Now, did you make reference to Susan</p> <p>2 Carroll -- so let's -- that's, actually, the very</p> <p>3 next exhibit.</p> <p>4 I'm sorry. Before we get to Carroll, I</p> <p>5 do want to show you Maria Holder. That's Exhibit</p> <p>6 17.</p> <p>7 (Exhibit P-17, Maria Holder</p> <p>8 exit interview, 792.)</p> <p>9 <b>Q. Maria Holder -- and I'll represent to you, in the</b></p> <p>10 <b>interest of time, that in the answers to</b></p> <p>11 <b>interrogatories, Maria Holder is identified as</b></p> <p>12 <b>another individual who was disciplined under</b></p> <p>13 <b>AP-05.</b></p> <p>14 <b>Do you know who Maria Holder is?</b></p> <p>15 A. No, I don't.</p> <p>16 <b>Q. Do you know whether Maria Holder, who was a</b></p> <p>17 <b>Seabrook pharmacy employee -- or Seabrook Walmart</b></p> <p>18 <b>employee -- why her name was disclosed in answers</b></p> <p>19 <b>to interrogatories?</b></p> <p>20 A. I do not.</p> <p>21 <b>Q. Do you know whether the situation involving Maria</b></p> <p>22 <b>Holder was considered by anyone in the decision to</b></p> <p>23 <b>discipline Ms. McPadden?</b></p> <p>24 A. It was not.</p>	<p style="text-align: right;">80</p> <p>1 <b>Q. So for not reporting a missing key or lost key,</b></p> <p>2 <b>she got a one-level discipline; right?</b></p> <p>3 A. Well, it wouldn't have mattered if she got one or</p> <p>4 four. She had only one more to go before she was</p> <p>5 terminated.</p> <p>6 <b>Q. So the reason that she got terminated, then, is</b></p> <p>7 <b>because she was on decision day.</b></p> <p>8 A. Yes. Just like in our situation, Maureen already</p> <p>9 had two. So if she only got the two levels, she'd</p> <p>10 only have two levels currently.</p> <p>11 <b>Q. Okay. Ms. McPadden -- now, let's get back to Ms.</b></p> <p>12 <b>Carroll. On her exhibit interview, which is</b></p> <p>13 <b>Exhibit No. 18, what actually happened in her case</b></p> <p>14 <b>is that the key was left in the lock.</b></p> <p>15 <b>She didn't lose her key; right?</b></p> <p>16 A. I don't have an exhibit.</p> <p>17 <b>Q. Didn't I give it to you?</b></p> <p>18 A. No.</p> <p>19 <b>Q. I'm sorry. I gave you the other one.</b></p> <p>20 <b>No. 18.</b></p> <p>21 <b>(Exhibit P-18, Susan Carroll</b></p> <p>22 <b>exit interview, 614.)</b></p> <p>23 <b>Q. Under "Manager Comments."</b></p> <p>24 A. (Witness reviews document.) So her infraction</p>

<p style="text-align: right;">81</p> <p>1 actually was less than losing a pharmacy key, and</p> <p>2 she got two levels.</p> <p>3 <b>Q. You consider leaving the key in the lock as being</b></p> <p>4 <b>less than accidentally losing a key?</b></p> <p>5 A. We could watch video and know that that key was</p> <p>6 not left unattended, 'cause we could see the key</p> <p>7 in the lock the whole time.</p> <p>8 <b>Q. Are you aware that pharmacists have -- in this</b></p> <p>9 <b>case have testified -- including Mr. Certo -- that</b></p> <p>10 <b>he leaves his pharmacy key at home when he goes on</b></p> <p>11 <b>vacation. Ms. Urbansky, other pharmacists leave</b></p> <p>12 <b>their pharmacy key in a drawer. Mr. -- Pharmacist</b></p> <p>13 <b>Tau leaves it in a drawer.</b></p> <p>14 <b>Are you aware of that testimony?</b></p> <p>15 A. No.</p> <p>16 <b>Q. And I could certainly take a pharmacy key out of a</b></p> <p>17 <b>drawer if I happen to be out Mr. Tau's home for a</b></p> <p>18 <b>cocktail party and go and open the pharmacy;</b></p> <p>19 <b>couldn't I?</b></p> <p>20 A. But they knew where their key was. They didn't</p> <p>21 lose it.</p> <p>22 (Counsel confer.)</p> <p>23 <b>Q. In Ms. Carroll's case, not only did she leave</b></p> <p>24 <b>the -- the key in the lock, she left a spare set</b></p>	<p style="text-align: right;">83</p> <p>1 A. She had all of the east coast. So she had</p> <p>2 thousands of pharmacies.</p> <p>3 <b>Q. Okay. It's not curious to you that no pharmacist</b></p> <p>4 <b>other than Ms. McPadden -- or prior to Ms.</b></p> <p>5 <b>McPadden -- had been disciplined for accidentally</b></p> <p>6 <b>losing their key?</b></p> <p>7 A. Pharmacists are actually very responsible people.</p> <p>8 So they probably d dn't lose their key.</p> <p>9 <b>Q. You don't -- you think Ms. McPadden's the first</b></p> <p>10 <b>pharmacist in Walmart's history to have lost their</b></p> <p>11 <b>key?</b></p> <p>12 A. It's the first in this region since I had t in</p> <p>13 seven years.</p> <p>14 <b>Q. First that you became aware of.</b></p> <p>15 A. Right.</p> <p>16 <b>Q. Right. And you've told me already that a pharmacy</b></p> <p>17 <b>district manager or market manager could deal with</b></p> <p>18 <b>that situation without involving you; right?</b></p> <p>19 A. No. They would have had involved me if a</p> <p>20 pharmacist lost their keys --</p> <p>21 <b>Q. Well, I thought you --</b></p> <p>22 A. -- because they have to get the pharmacy rekeyed.</p> <p>23 <b>Q. Is this, Ms. McPadden, the first time that a</b></p> <p>24 <b>pharmacy has been rekeyed?</b></p>
<p style="text-align: right;">82</p> <p>1 <b>of keys in a drawer -- in an unlocked drawer in</b></p> <p>2 <b>the vision center; and that had patient</b></p> <p>3 <b>confidential information or access to patient</b></p> <p>4 <b>confidential information; correct?</b></p> <p>5 A. The drawer d dn't have any. By accessing the key,</p> <p>6 they would have had -- same as if someone got</p> <p>7 ahold of Maureen's key, they would have still had</p> <p>8 access to HIPAA information.</p> <p>9 <b>Q. Right. So did you discuss with anyone -- before</b></p> <p>10 <b>arriving at your definition of unsecure, did you</b></p> <p>11 <b>discuss that with anyone other than Mr. Certo and</b></p> <p>12 <b>Ms. Kulwicki at all?</b></p> <p>13 A. No.</p> <p>14 <b>Q. And you were being told by Mr. Certo that she</b></p> <p>15 <b>accidentally lost her key, and you've now been a</b></p> <p>16 <b>regional manager for several years involving</b></p> <p>17 <b>several hundred pharmacies -- thousands -- I won't</b></p> <p>18 <b>exaggerate -- but many pharmacies, many</b></p> <p>19 <b>pharmacists.</b></p> <p>20 <b>Did you call anyone to say, Have you</b></p> <p>21 <b>ever experienced a pharmacist losing their key,</b></p> <p>22 <b>and what should happen?</b></p> <p>23 A. I called Barbara Kulw cki.</p> <p>24 <b>Q. That's it?</b></p>	<p style="text-align: right;">84</p> <p>1 A. No.</p> <p>2 <b>Q. All right. So in the request or permission you --</b></p> <p>3 <b>I think you've testified previously that you</b></p> <p>4 <b>essentially approved -- like, Mr. Tau's hire, that</b></p> <p>5 <b>was an automatic approval, relatively speaking;</b></p> <p>6 <b>correct?</b></p> <p>7 A. I don't know what you're referencing.</p> <p>8 <b>Q. Are your -- is it going to be your testimony -- or</b></p> <p>9 <b>is it your testimony to this jury that you</b></p> <p>10 <b>believe, in the seven years that you were regional</b></p> <p>11 <b>manager for umpteen stores, nobody lost their key?</b></p> <p>12 <b>No pharmacist accidentally lost their key?</b></p> <p>13 A. That I'm aware of; no. This is the first one.</p> <p>14 <b>Q. And it's entirely possible that it happened, but</b></p> <p>15 <b>it never got called to your attention; correct?</b></p> <p>16 A. No, because the coaching would have been able to</p> <p>17 be found, and we couldn't find one.</p> <p>18 <b>Q. Well, it could be that a pharmacist lost their key</b></p> <p>19 <b>and didn't receive any coaching; isn't that</b></p> <p>20 <b>possible?</b></p> <p>21 A. Anything's possible --</p> <p>22 <b>Q. Okay.</b></p> <p>23 A. -- but not probable.</p> <p>24 <b>Q. Now, you consulted Shawn Wood's boss when you made</b></p>

<p style="text-align: right;">85</p> <p>1 the decision involving Ms. Carroll; correct?</p> <p>2 A. Yes.</p> <p>3 Q. And that's -- Shawn Wood's boss is the divisional</p> <p>4 asset protection manager, who happened to be in</p> <p>5 your office; right?</p> <p>6 A. No.</p> <p>7 Q. Oh. I'm sorry.</p> <p>8 What -- who is the -- the boss?</p> <p>9 A. She's a regional asset protect on manager.</p> <p>10 Q. Oh, I'm sorry. I'm going to show you what's</p> <p>11 marked as Exhibit 19. And this is an email from</p> <p>12 Mr. Shawn Wood, who is identified as the asset</p> <p>13 protection manager, and he's responding to Mr.</p> <p>14 Certo.</p> <p>15 Have you seen that email before?</p> <p>16 (Exhibit P-19, Shawn Wood email, 2907.)</p> <p>17 A. Just during my depos t on.</p> <p>18 Q. So Mr. Certo never showed you this email; correct?</p> <p>19 A. Correct.</p> <p>20 Q. And he never told you about this email; correct?</p> <p>21 A. Correct.</p> <p>22 Q. And Mr. Certo is asking Mr. Wood, the asset</p> <p>23 protection manager, what does he believe should</p> <p>24 happen about a, quote, "lost key."</p>	<p style="text-align: right;">87</p> <p>1 store"; correct?</p> <p>2 A. Yes.</p> <p>3 Q. So Mr. Certo is engaged in this exchange.</p> <p>4 A. Yes.</p> <p>5 Q. So Mr. Certo thought enough about Mr. Wood to</p> <p>6 respond to his opinion; right?</p> <p>7 A. Well, he d dn't in tiate the quest on.</p> <p>8 Q. I understand.</p> <p>9 A. He was just responding to an email that someone</p> <p>10 sent him.</p> <p>11 Q. I understand.</p> <p>12 And, then, Mr. Wood asks Mr. Certo:</p> <p>13 "Are you looking at accountability or no";</p> <p>14 correct?</p> <p>15 A. Shawn asked Joe if he's looking for</p> <p>16 accountabil ty.</p> <p>17 Q. Right. And then Mr. Certo says "I have to look at</p> <p>18 what's been done in the past. Has she done this</p> <p>19 before?"</p> <p>20 Do you see that question?</p> <p>21 A. Yes.</p> <p>22 Q. And we know that the answer to that is no; right?</p> <p>23 Ms. McPadden has not previously lost a</p> <p>24 pharmacy key; correct?</p>
<p style="text-align: right;">86</p> <p>1 And Mr. Wood's first response was to</p> <p>2 rekey the pharmacy; right?</p> <p>3 "My experience has been rekey</p> <p>4 immediately."</p> <p>5 Do you see that?</p> <p>6 A. Yeah. So Shawn Wood wouldn't have any kind of --</p> <p>7 well, no. That email came from -- not Joe.</p> <p>8 That email came from whoever Tami</p> <p>9 Boronski is.</p> <p>10 Q. Okay. And Mr. Certo's copied on it?</p> <p>11 A. Yeah.</p> <p>12 Q. And the question is what happens in the event of a</p> <p>13 lost key; right?</p> <p>14 A. No. That's not the quest on.</p> <p>15 Q. "Our pharmacist has lost her keys and cannot</p> <p>16 locate them."</p> <p>17 Do you see that?</p> <p>18 A. There's no question there.</p> <p>19 Q. Well, his response, anyways, is "My experience is</p> <p>20 rekey immediately. Thoughts?"</p> <p>21 That's his response; right?</p> <p>22 A. That's Shawn's response; yes.</p> <p>23 Q. And, then, Mr. Certo, who's copied on those,</p> <p>24 responds "Yes. I've sent that direction to the</p>	<p style="text-align: right;">88</p> <p>1 A. As far as we know.</p> <p>2 Q. And by your testimony, if she had, we would know;</p> <p>3 right?</p> <p>4 A. I would think so.</p> <p>5 Q. And then Mr. Wood responds that he let an</p> <p>6 assistant manager go for losing the key and not</p> <p>7 reporting it.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And then Mr. Wood says to Mr. Certo, "My feeling</p> <p>11 would be next level," which would be a -- just a</p> <p>12 next-level coaching; right?</p> <p>13 A. But Shawn Wood is an asset protect on for division</p> <p>14 1. He has nothing to do w th health and wellness.</p> <p>15 Q. I understand.</p> <p>16 A. And that's why Joe confers with me, because he was</p> <p>17 not aware of the Susan Carroll incident. I have a</p> <p>18 broader knowledge than he does. Barb has a</p> <p>19 broader knowledge than I do. That's why we</p> <p>20 conferred with her.</p> <p>21 Q. Now, I'm going to show you Exhibit 20.</p> <p>22 (Exhibit P-20, Jesse Slater</p> <p>23 email, 2833.)</p> <p>24 Q. Mr. Slater is the store manager; right?</p>

<p style="text-align: right;">89</p> <p>1 A. Yes.</p> <p>2 <b>Q. Jesse Slater?</b></p> <p>3 <b>And Mr. Certo consults Jesse Slater as</b></p> <p>4 <b>well; right?</b></p> <p>5 A. (Witness reviews document.) He just let Jesse</p> <p>6 know that he needed to rekey the pharmacy.</p> <p>7 <b>Q. We see on the first email is a copy of Ms.</b></p> <p>8 <b>McPadden's notice to Mr. Certo at 11:20 that she</b></p> <p>9 <b>had misplaced her key on November 26, 11:20 a.m.</b></p> <p>10 <b>Do you see that?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. I'm sorry?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. All right. And then ultimately Mr. Slater,</b></p> <p>15 <b>somehow he gets involved -- he's on the chain</b></p> <p>16 <b>anyways -- responds to Mr. Certo "This would be</b></p> <p>17 <b>next level for her, and I am not sure where that</b></p> <p>18 <b>puts her."</b></p> <p>19 <b>Did I read that correctly?</b></p> <p>20 A. Again, Jesse has no bearing over health and</p> <p>21 wellness. He's a division 1 store manager.</p> <p>22 <b>Q. He's the store manager for the Seabrook pharmacy?</b></p> <p>23 A. He does not oversee the pharmacy.</p> <p>24 <b>Q. Oh. He oversees the store in which the pharmacy</b></p>	<p style="text-align: right;">91</p> <p>1 <b>Does everyone agree?"</b></p> <p>2 <b>Did I read that correctly?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. So Mr. Wallis -- have you previously been informed</b></p> <p>5 <b>of this opinion?</b></p> <p>6 A. No. But, again, he's division 1. So he has no</p> <p>7 bearing over health and wellness.</p> <p>8 <b>Q. So Mr. Certo didn't tell you about what Mr.</b></p> <p>9 <b>Wallis's recommendation was, what Mr. Slater's</b></p> <p>10 <b>recommendation was, or what Mr. Wall's -- Wood's</b></p> <p>11 <b>recommendation was; correct?</b></p> <p>12 A. No.</p> <p>13 <b>Q. That's correct?</b></p> <p>14 A. Correct.</p> <p>15 <b>Q. And, then, as the next exhibit, No. 21, which is</b></p> <p>16 <b>about -- well -- 21.</b></p> <p>17 MS. IRWIN: She has 21.</p> <p>18 (Exhibit P-22, Certo email, 2915.)</p> <p>19 <b>Q. I'm sorry. Could you give me that one back.</b></p> <p>20 A. (Witness complies.)</p> <p>21 <b>Q. Thank you. We have the -- I'm sorry.</b></p> <p>22 <b>Did I just give you 22? I did?</b></p> <p>23 A. 22.</p> <p>24 <b>Q. 22.</b></p>
<p style="text-align: right;">90</p> <p>1 <b>is located.</b></p> <p>2 A. But he does not oversee the pharmacy. That's the</p> <p>3 market director.</p> <p>16 <b>Q. Okay. Exhibit 21 is Mr. Wallis. Donald Wallis is</b></p> <p>17 <b>identified as a market manager.</b></p> <p>18 <b>Do you see that?</b></p> <p>19 <b>(Exhibit P-21, Don Wallis email, 2889.)</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. Now, Mr. Wallis explains or responds to Mr. Certo</b></p> <p>22 <b>and says "According to our key control policy,</b></p> <p>23 <b>this would be first level, up to termination. I</b></p> <p>24 <b>would think first written would be appropriate.</b></p>	<p style="text-align: right;">92</p> <p>1 <b>We have an email from Mr. Certo or on</b></p> <p>2 <b>behalf of Mr. Certo that he agrees with Mr.</b></p> <p>3 <b>Wallis; correct? "I agree, but I believe she is</b></p> <p>4 <b>on a third written currently. I will get back to</b></p> <p>5 <b>you."</b></p> <p>6 <b>Did I read that correctly?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. So that's Mr. Certo communicating with Mr. Wallis</b></p> <p>9 <b>about what would be an appropriate accountability</b></p> <p>10 <b>under these circumstances; correct?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. And then I'll show you No. 23.</b></p> <p>13 <b>(Exhibit P-23, Certo email, 2913.)</b></p> <p>14 <b>Q. And that is Mr. Certo -- or at least on behalf of</b></p> <p>15 <b>Mr. Certo -- a few hours later responding to Mr.</b></p> <p>16 <b>Wallis and to Mr. Wood and to Mr. Slater, as well</b></p> <p>17 <b>as now a Mr. Hamilton, who is an MBA and SPHR</b></p> <p>18 <b>"Upon review and to be consistent in the region,</b></p> <p>19 <b>this will be a second level coaching. Henry, I</b></p> <p>20 <b>will call you shortly to review and partner with</b></p> <p>21 <b>you on this."</b></p> <p>22 <b>Did I review that correctly?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. So Mr. Hamilton, incidentally now, is HR, and he's</b></p>



<p style="text-align: right;">93</p> <p>1       partnering with Mr. Certo, because it involves the</p> <p>2       termination of a pharmacist; correct?</p> <p>3               MR. KACZMAREK: Objection.</p> <p>4       A. Yes.</p> <p>5       Q. I'm sorry?</p> <p>6       A. Yes.</p> <p>7       Q. Yeah.</p> <p>8       A. He needed a witness for the termination.</p> <p>9       Q. Okay. I just want to -- kind of -- summarize</p> <p>10       everything you did in regards to the decision to</p> <p>11       issue a two-level coaching is that you spoke with</p> <p>12       Mr. Certo and Ms. Kulwicki; correct?</p> <p>13       A. Yes.</p> <p>14       Q. You looked at the accountability matrix --</p> <p>15       although it's not mentioned in your affidavit or</p> <p>16       your answers to interrogatories; correct?</p> <p>17       A. Yes.</p> <p>18       Q. You recall policy 902, but you didn't actually</p> <p>19       call it up; correct?</p> <p>20       A. Yeah. I don't believe I physically pulled t up.</p> <p>21       I know that well enough.</p> <p>22       Q. Okay. And -- and it is not mentioned in your</p> <p>23       affidavit; correct?</p> <p>24       A. Correct.</p>	<p style="text-align: right;">95</p> <p>1       Q. Right.</p> <p>2       A. But t was at least Barb and I.</p> <p>3       Q. If you look at deposition page 88, when I took</p> <p>4       your deposition, line 20 and 24, I ask you:</p> <p>5       "Aside from Barbara Kulwicki, Heather McCaffrey,</p> <p>6       and Joe Certo, do you know of any other Walmart</p> <p>7       individuals involved in the decision to issue a</p> <p>8       coaching that led to her termination?" And you</p> <p>9       say, "No"; correct?</p> <p>10       A. Right.</p> <p>11       Q. Correct?</p> <p>12       A. That's what I just said.</p> <p>13       Q. All right. Now, I think you've said a couple of</p> <p>14       times that this notion of discipline being applied</p> <p>15       consistently throughout the company, that is a</p> <p>16       goal of the company; right?</p> <p>17       A. Consistency would always be a goal of the company;</p> <p>18       yes.</p> <p>19       Q. Okay. And Walmart regional managers are trained</p> <p>20       in that regard -- to be consistent?</p> <p>21       A. Yes.</p> <p>22       Q. And so are the market directors; right? Correct?</p> <p>23       A. Yes.</p>
<p style="text-align: right;">94</p> <p>1       Q. And you independently recalled an incident</p> <p>2       involving Susan Carroll, but you didn't review any</p> <p>3       documents involving Susan Carroll; correct?</p> <p>4       A. Correct.</p> <p>5       Q. You didn't look at her exit interview or anything</p> <p>6       like that.</p> <p>7       A. No.</p> <p>8       Q. You did not review AP-05 --</p> <p>9       A. No.</p> <p>10       Q. -- right?</p> <p>11               And you did not independently, you,</p> <p>12       yourself, investigate what happened to other</p> <p>13       pharmacists that had lost their keys; correct?</p> <p>14       A. I asked Barbara Kulwicki. Like I said, she has</p> <p>15       thousands of stores, so she had a broad</p> <p>16       perspective on that.</p> <p>17       Q. You admit that Ms. Kulwicki and Mr. Certo were</p> <p>18       involved in the decision to issue Ms. McPadden a</p> <p>19       coaching that led to her termination; correct?</p> <p>20       A. Yes.</p> <p>21               MR. KACZMAREK: Objection.</p> <p>22       Q. I'm sorry?</p> <p>23       A. I believe -- like I sa d, I don't remember if Joe</p> <p>24       was on the call.</p>	<p style="text-align: right;">96</p> <p>9       Q. The objective is to have accountability to be</p> <p>10       consistent within at least the region, as, in this</p> <p>11       case, certainly within New Hampshire; correct?</p> <p>12       A. No. My regions span from Maine to Rhode Island.</p> <p>13       Q. All right. So is it all six New England states?</p> <p>14       A. Yes.</p> <p>15       Q. And would you expect or hope that the</p> <p>16       accountability would be consistent within that</p> <p>17       region.</p> <p>18       A. Yes.</p> <p>19       Q. And that's -- consistency is to prevent</p> <p>20       disciplinary actions being made more harsh on</p> <p>21       females than males, for example; correct?</p> <p>22       A. Correct.</p> <p>23       Q. It's also to make sure that pharmacists who report</p> <p>24       and document safety concerns are not disciplined</p>



<p style="text-align: right;">97</p> <p>1 more harshly than other pharmacists; correct?</p> <p>2 A. Correct.</p> <p>3 <b>Q. And it's also intended for employees with</b></p> <p>4 <b>disabilities not being disciplined more harshly</b></p> <p>5 <b>than others; correct?</b></p> <p>6 A. It's for everyone to be disciplined the same --</p> <p>7 <b>Q. And --</b></p> <p>8 A. -- regardless of their situation.</p> <p>9 <b>Q. All right. So that would also involve employees</b></p> <p>10 <b>with need for FMLA -- you wouldn't want to have</b></p> <p>11 <b>them disciplined more harshly than others;</b></p> <p>12 <b>correct?</b></p> <p>13 A. No.</p> <p>14 <b>Q. And if a pharmacist is coached for log copies not</b></p> <p>15 <b>being filed at the end of the day, you would</b></p> <p>16 <b>expect, within the same area, that a male</b></p> <p>17 <b>pharmacist that doesn't have log copies completed</b></p> <p>18 <b>at the end of his shift would be coached as well;</b></p> <p>19 <b>correct?</b></p> <p>20 A. So a pharmacist would not be coached for leaving</p> <p>21 log copies not done one day. That would be</p> <p>22 something consistently discussed with someone. So</p> <p>23 I'd need to have more information on that.</p> <p>24 <b>Q. Was -- Mr. Certo ever tell that you Mr. Varieur,</b></p>	<p style="text-align: right;">99</p> <p>1 relying on, other than this -- again, this notion</p> <p>2 of it being, quote, "unsecure"; right?</p> <p>3 A. We can't have a policy for everything that</p> <p>4 happens.</p> <p>5 <b>Q. But Walmart tries.</b></p> <p>6 A. We're pretty good. Not that good, obviously.</p> <p>7 <b>Q. At page 62 of your deposition, if you turn to</b></p> <p>8 <b>that. Page 62, at line 13 -- and now we're</b></p> <p>9 <b>talking about you as the 30(b)(6) witness -- I ask</b></p> <p>10 <b>you "Tell me what you did to investigate whether</b></p> <p>11 <b>losing a pharmacy key was a policy violation."</b></p> <p>12 <b>And you answer: "I didn't investigate.</b></p> <p>13 <b>Joe was the investigator."</b></p> <p>14 <b>Did I read that correctly?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. So you relied on Mr. Certo; correct?</b></p> <p>17 A. Correct.</p> <p>18 <b>Q. And in terms of the alarm having gone off, if</b></p> <p>19 <b>somebody had found the key and tried to access it,</b></p> <p>20 <b>the alarm, presumably, would have gone off. And</b></p> <p>21 <b>you didn't investigate whether there was an alarm</b></p> <p>22 <b>at that pharmacy; correct?</b></p> <p>23 A. I did not.</p> <p>24 <b>Q. We talked a little bit about the HIPAA policy</b></p>
<p style="text-align: right;">98</p> <p>1 the pharmacy manager, was not getting log copies</p> <p>2 completed at the end of the day -- at the end of</p> <p>3 his shift?</p> <p>4 A. I don't recall.</p> <p>5 <b>Q. Incidentally, you were the witness that --</b></p> <p>6 <b>designated by Walmart as knowing what Walmart did</b></p> <p>7 <b>or did not do relative to the -- issued the</b></p> <p>8 <b>decision in this case to Ms. McPadden; right? You</b></p> <p>9 <b>were the 30(b)(6) witness on that, the decision to</b></p> <p>10 <b>terminate -- discipline and then terminate Ms.</b></p> <p>11 <b>McPadden?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. And in that regard, you did not conduct an</b></p> <p>14 <b>investigation about whether a lost key was a</b></p> <p>15 <b>violation of any particular policy; correct?</b></p> <p>16 A. Like we've gone through before, there's multiple</p> <p>17 things that we looked at to discuss. We don't</p> <p>18 have a specific policy pertaining to lost keys.</p> <p>19 <b>Q. Well, what you're -- what you're specifically</b></p> <p>20 <b>referring to now is this notion that because the</b></p> <p>21 <b>key is lost, it's unsecured --</b></p> <p>22 A. Correct.</p> <p>23 <b>Q. -- right?</b></p> <p>24 <b>There's no other policy that you're</b></p>	<p style="text-align: right;">100</p> <p>1 earlier this morning, and I want to thank you for</p> <p>2 cooperating in that regard. So it makes this</p> <p>3 deposition now a little easier.</p> <p>4 <b>I'll show you what's marked as No. 24.</b></p> <p>5 <b>That's the same HIPAA policy that we had this</b></p> <p>6 <b>morning; correct?</b></p> <p>7 <b>(Exhibit P-24, previously marked.)</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. And under "Reporting a Violation" on the very</b></p> <p>10 <b>first page -- excuse me -- Walmart makes it clear</b></p> <p>11 <b>that it is "committed to preventing improper use</b></p> <p>12 <b>or disclosure of protected health information";</b></p> <p>13 <b>correct?</b></p> <p>14 A. (Witness reviews document.) You're reading under</p> <p>15 "Reporting a Violation"?</p> <p>16 <b>Q. Yes. "Reporting a Violation"; correct.</b></p> <p>17 A. Say that again.</p> <p>18 <b>Q. It's important -- Walmart makes it clear that it,</b></p> <p>19 <b>Walmart, is "committed to preventing improper use</b></p> <p>20 <b>or disclosure of protected health information."</b></p> <p>21 A. Yeah. We -- we protect PHI as best we can.</p> <p>22 <b>Q. And -- and "PHI" is protected health information?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. And then it goes on to say that "If an associate</b></p>

<p style="text-align: right;">101</p> <p>1 becomes aware of any conduct that may violate the</p> <p>2 policy, it's to be reported immediately to a</p> <p>3 salaried member of management; correct?</p> <p>4 A. Yes.</p> <p>5 Q. On the second page, under "Investigations and</p> <p>6 Appropriate Action," Walmart states that it's --</p> <p>7 it "takes any reported violation of the policy</p> <p>8 very seriously."</p> <p>9 Do you see that?</p> <p>10 A. Yes, we do.</p> <p>11 Q. And that's because patients rely on their</p> <p>12 prescription records being kept private; right?</p> <p>13 A. Yes.</p> <p>14 Q. Walmart goes on to say that "It will promptly</p> <p>15 investigate and resolve complaints regarding</p> <p>16 potential improper use or disclosure of PHI";</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. And that's your experience?</p> <p>20 A. Yes.</p> <p>21 Q. And you agree that a technician should not be</p> <p>22 discussing prescription information for purposes</p> <p>23 other than to fill the prescription; and to do so</p> <p>24 would actually violate the HIPAA policy; correct?</p>	<p style="text-align: right;">103</p> <p>1 correct?</p> <p>2 A. There's another -- there's a witness when we're</p> <p>3 talking to someone; yes.</p> <p>4 Q. And, now, I'd like to talk to you about Exhibit</p> <p>5 No. 25, which is the Family Medical Leave Act.</p> <p>6 That's FMLA? You're familiar with that?</p> <p>7 (Exhibit P-25, previously marked.)</p> <p>8 A. Yes.</p> <p>9 Q. And here, again, any complaint of a violation of</p> <p>10 this policy would be something that would be</p> <p>11 investigated; correct?</p> <p>12 A. It should be; yes.</p> <p>13 Q. And employees are entitled to time off if they</p> <p>14 have a medical condition that qualifies them under</p> <p>15 FMLA; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And now No. 26.</p> <p>18 (Exhibit P-26, previously marked.)</p> <p>19 Q. That's an email that involved Ms. McPadden</p> <p>20 reporting -- if you look at the very bottom --</p> <p>21 that her leave of absence, which we understand and</p> <p>22 the jury will know by now that Ms. McPadden took a</p> <p>23 leave of absence from September 19th to October</p> <p>24 3rd for a serious medical condition -- she viewed</p>
<p style="text-align: right;">102</p> <p>1 A. Correct.</p> <p>2 Q. And you agree that a prescription is, in fact,</p> <p>3 PHI.</p> <p>4 A. Yes.</p> <p>5 Q. And whether the customer is a patient or another</p> <p>6 employee, they're entitled to that protection.</p> <p>7 A. Yes.</p> <p>8 Q. And Mr. Certo did not tell you that Ms. McPadden</p> <p>9 complained of a HIPAA violation in October, just a</p> <p>10 month before she was fired; did he?</p> <p>11 A. No.</p> <p>12 Q. That's correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And if Mr. Certo failed to investigate a HIPAA</p> <p>15 violation, he would be in violation of Walmart's</p> <p>16 policy; right?</p> <p>17 A. Yes.</p> <p>18 Q. If there was an investigation, it should be</p> <p>19 documented somewhere, correct -- of Ms. McPadden's</p> <p>20 complaint?</p> <p>21 A. It should be.</p> <p>22 Q. And I think you testified, but I want to make</p> <p>23 sure, there is always another witness to an</p> <p>24 investigation -- another member of management;</p>	<p style="text-align: right;">104</p> <p>1 that as FMLA, and it was being classified as</p> <p>2 personal leave.</p> <p>3 And this email actually raises the</p> <p>4 question that she has -- why it is improperly</p> <p>5 labeled.</p> <p>6 Do you see that?</p> <p>7 A. Yes. She called us in to HR SS --</p> <p>8 Q. Okay.</p> <p>9 A. -- and let them know.</p> <p>10 Q. All right. And Mr. Certo is copied on that email;</p> <p>11 correct?</p> <p>12 A. I believe so.</p> <p>13 Q. Now, did Mr. Certo tell you on the date --</p> <p>14 A. Actually, no. He's not.</p> <p>15 Q. I think if you take the next page -- look at the</p> <p>16 next page.</p> <p>17 A. That says on 9/25. He wasn't copied on that one.</p> <p>18 Q. He's not copied on this string?</p> <p>19 A. He might be on the string, but he wasn't copied on</p> <p>20 that specific email. 'Cause you can see it was at</p> <p>21 9/26/12 -- 9/26/12 at 8:19:44, whoever K3Schul is</p> <p>22 where it went. It didn't go to Joe.</p> <p>23 Q. Wouldn't --</p> <p>24 A. It might have eventually, but that specific one</p>

<p style="text-align: right;">105</p> <p>1 did not go to him.</p> <p>2 <b>Q. So it might have been on the 27th.</b></p> <p>3 A. It could have -- no --</p> <p>4 <b>Q. Well, let me ask you --</b></p> <p>5 A. -- it didn't.</p> <p>6 <b>Q. Does it not -- does it not say on the 25th --</b></p> <p>7 A. She called in on the 26th, though.</p> <p>8 <b>Q. Right. But on the 25th it says that Ms. McPadden</b></p> <p>9 <b>advised that MHWD Joseph Certo has the information</b></p> <p>10 <b>and she will reach out to him; correct?</b></p> <p>11 A. She faxed t to his office.</p> <p>12 <b>Q. Right.</b></p> <p>13 A. That doesn't mean he received it.</p> <p>14 <b>Q. And, then, at the very top, actually, on 9/26, it</b></p> <p>15 <b>says "From: AR system." And it says "To: Joseph</b></p> <p>16 <b>Certo."</b></p> <p>17 <b>Do you see that?</b></p> <p>18 A. Yeah. But that's in eastern time, and this is in</p> <p>19 central time. So he wouldn't have gotten that.</p> <p>20 <b>Q. How would I know that that's in eastern time, as</b></p> <p>21 <b>opposed to central time?</b></p> <p>22 A. Because we had that on another email that you sent</p> <p>23 that the times d dn't match up. And when they</p> <p>24 send t from home off ce, it shows central time.</p>	<p style="text-align: right;">107</p> <p>1 <b>Q. All right. And HR SS is a part of Walmart.</b></p> <p>2 A. Right.</p> <p>3 <b>Q. And Mr. Certo never told you that Ms. McPadden had</b></p> <p>4 <b>an issue and complained about the fact that this</b></p> <p>5 <b>was not properly -- her time was not properly</b></p> <p>6 <b>classified -- her time off was not properly</b></p> <p>7 <b>classified?</b></p> <p>8 A. He may not have known.</p> <p>9 <b>Q. Well, let's -- let's take what he knew or didn't</b></p> <p>10 <b>know out of the equation.</b></p> <p>11 <b>He never told you.</b></p> <p>12 A. He never told me.</p> <p>13 <b>Q. All right. In fact, you recently learned that</b></p> <p>14 <b>Walmart made an error, and it should have actually</b></p> <p>15 <b>been designated FMLA; right?</b></p> <p>16 A. Yes. It was put in as personal, and she was still</p> <p>17 paid the way that she would have been.</p> <p>18 <b>Q. And when I say "recently," that could have been as</b></p> <p>19 <b>recent as within the last month or two months.</b></p> <p>20 A. Can you repeat the question?</p> <p>21 <b>Q. Sure. I -- I said that you recently learned that</b></p> <p>22 <b>Walmart made an error with respect to this</b></p> <p>23 <b>classification of her leave of absence as personal</b></p> <p>24 <b>time and not FMLA. That could have been as recent</b></p>
<p style="text-align: right;">106</p> <p>1 <b>Q. Well, that's only a difference of an hour; right?</b></p> <p>2 A. Right. So t was a minute and 30 seconds off.</p> <p>3 <b>Q. Is it your testimony that you believe Mr. Certo</b></p> <p>4 <b>didn't know that Maureen McPadden wanted her leave</b></p> <p>5 <b>of absence designated as FMLA?</b></p> <p>6 A. I don't know what he knows. But he may not have</p> <p>7 gotten this email, based on what this shows.</p> <p>8 <b>Q. Did you ask Mr. Certo whether he knew that Ms.</b></p> <p>9 <b>McPadden wanted it FMLA and not personal leave?</b></p> <p>10 A. I would have had no idea that this even happened.</p> <p>11 <b>Q. Right.</b></p> <p>12 A. I wasn't on this.</p> <p>13 <b>Q. Would you, as a manager of many, many employees</b></p> <p>14 <b>for several years now, expect that if a person</b></p> <p>15 <b>goes out on a two-week leave of absence under</b></p> <p>16 <b>doctor's advice with a certification from the</b></p> <p>17 <b>doctor, would you expect that employee to have</b></p> <p>18 <b>that designated FMLA?</b></p> <p>19 A. It depends on their circumstances.</p> <p>20 <b>Q. Uh-huh. Okay.</b></p> <p>21 <b>In any event, the email that we see here</b></p> <p>22 <b>evidences Ms. McPadden's intent that it be</b></p> <p>23 <b>designated FMLA, not personal; correct?</b></p> <p>24 A. Yeah. She let HR SS know that.</p>	<p style="text-align: right;">108</p> <p>1 <b>as in the last two months.</b></p> <p>2 A. Yes. That's when I was made aware.</p> <p>3 <b>Q. All right. Mr. Certo, in the decision -- when</b></p> <p>4 <b>this decision is made to issue the discipline,</b></p> <p>5 <b>didn't tell you that he had a one-hour meeting</b></p> <p>6 <b>with Ms. McPadden in mid-October, when she</b></p> <p>7 <b>returned from her leave of absence, and she told</b></p> <p>8 <b>him at that time about her medical condition; that</b></p> <p>9 <b>she may need more medical leave in the future; did</b></p> <p>10 <b>he?</b></p> <p>11 A. No.</p> <p>12 <b>Q. And we've already established that he didn't tell</b></p> <p>13 <b>you that she raised the safety concerns more than</b></p> <p>14 <b>once, and most recently November 16th; correct?</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. All Mr. Certo really told you is that she had lost</b></p> <p>17 <b>her key, and he was looking for a level of</b></p> <p>18 <b>accountability; right?</b></p> <p>19 A. We had discussed Seabrook pharmacy and not Maureen</p> <p>20 specifically.</p> <p>21 <b>Q. All right. And he didn't tell you about the</b></p> <p>22 <b>opinions that he received from his peers -- Mr.</b></p> <p>23 <b>Wallis, Mr. Slater, or Mr. Wood; correct?</b></p> <p>24 A. Well, they're not his peers.</p>

<p>109</p> <p>1 Q. Well, you didn't -- I didn't -- whatever you want 2 to call them, he didn't tell you about them -- 3 A. No. 4 Q. -- right? 5 Now, are you aware of Josh Varieur, the 6 pharmacy manager at the store at the time of this 7 termination? 8 A. I know the name. I don't know him very well at 9 all; no.</p>	<p>111</p>
<p>110</p>	<p>112</p> <p>9 Q. And Mr. Varieur was the pharmacy manager at the 10 Seabrook store, correct, in 2012?</p> <p>12 Q. May 2012, May through the end of the year? 13 A. I don't -- 14 Q. You don't -- 15 A. I don't know the dates that he was the pharmacy 16 manager. 17 Q. And you have no information or Mr. Certo never 18 told you that Ms. McPadden was having difficulty 19 with Mr. Certo as the pharmacy manager; correct? 20 A. Mr. Certo was not the pharmacy manager. 21 Q. I'm sorry. Maybe I named the names wrong. 22 What I'm asking you is Mr. Certo never 23 told you that Ms. McPadden was having difficulty 24 with Mr. Varieur, as the pharmacy manager of the</p>

<p>113</p> <p>1       <b>Seabrook pharmacy; correct?</b></p> <p>2       A.   I don't believe so.</p> <p>3       <b>Q.   Okay. And he never told -- Mr. Certo never told</b></p> <p>4       <b>you about the reports of those serious</b></p> <p>5       <b>patient-filling concerns or safety concerns;</b></p> <p>6       <b>correct?</b></p> <p>7       A.   No. 'Cause, like I said before, we discussed</p> <p>8       Seabrook pharmacy. We overstaffed the pharmacy,</p> <p>9       because they weren't able to handle the workload</p> <p>10      that they had, given the staffing that they were</p> <p>11      given. So we overstaffed that pharmacy for them.</p>	<p>115</p>
<p>114</p> <p>;</p> <p>;</p> <p>;</p> <p>;</p>	<p>116</p>

<p style="text-align: right;">117</p> <p>6 <b>Q. And Walmart personnel documents actually say that</b>  7 <b>it was a mutual decision to remove Mr. Varieur</b>  8 <b>from the store; right?</b>  9 A. Where are you reading?  10 <b>Q. I'm not reading anything specific. I'm just</b>  11 <b>saying, if I were to read -- be looking at hiring</b>  12 <b>Mr. Varieur, and I looked at Exhibits 29 and 30, I</b>  13 <b>would -- I would lead -- it would lead me to the</b>  14 <b>conclusion that Mr. Varieur requested the</b>  15 <b>transfer, and Walmart agreed to it.</b>  16 A. That's what it appears.  17 <b>Q. But that's not what happened; is it?</b>  18 <b>Mr. Varieur didn't have a choice; did</b>  19 <b>he?</b>  20 A. He had a choice. He signed this.  21 <b>Q. Well, didn't you testify that he did not have a</b>  22 <b>choice at your deposition, page 121?</b>  23 A. He always had a choice. I think he knew it was  24 probably the best thing for him.</p>	<p style="text-align: right;">119</p>
<p style="text-align: right;">118</p> <p>1 <b>Q. Take a look at page 121, line 5 through 7.</b>  2 A. (Witness reviews document.)  3 <b>Q. I ask "Whose decision was it to remove Josh?" And</b>  4 <b>you testify "I believe we talked with Barb</b>  5 <b>Kulwicki and Joe and I -- I think was at a time --</b>  6 <b>I think -- I can't remember who the market</b>  7 <b>director was -- but I would have had a discussion</b>  8 <b>with the market director, and I believe they had a</b>  9 <b>conversation with Josh. And it was a mutual</b>  10 <b>decision to remove him from the store."</b>  11 <b>Did I read that correctly?</b>  12 A. Yes.  13 <b>Q. All right. So then I say "A mutual decision, Josh</b>  14 <b>agreed?" And you say "Yes." And I say "Not</b>  15 <b>mutual as you and Certo." And you say "Right.</b>  16 <b>Josh agreed."</b>  17 <b>And then I ask you "Was he given a</b>  18 <b>choice?" And you say "Not really."</b>  19 <b>What did you mean there?</b>  20 A. Well, I think he knew that he wasn't going to be  21 successful where he was. So he's always given a  22 choice. I mean, he had to sign this. You know,  23 he didn't have to move. But he knew it was the  24 best thing for him to do so.</p>	<p style="text-align: right;">120</p>

121	123
122	124

<p style="text-align: right;">125</p> <p>6 <b>Q. All right. And if you go back to Coaching for Improvement, policy No. 8 -- I mean, Exhibit No. 8, that's that Coaching for Improvement.</b></p> <p>7 <b>Do you have it in front of you?</b></p> <p>8 <b>Go to the last page, if you would, under "Termination."</b></p> <p>9 <b>Are you there?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. There are circumstances where behavior is so egregious that it warrants going directly to termination; correct?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. And this gives examples of situations where behavior or misbehavior is so serious it should result in immediate termination; correct?</b></p> <p>14 A. Yes.</p>	<p style="text-align: right;">127</p> <p>1 <b>Q. All right. And I surmise by your answers intent plays a fact in accountability; correct?</b></p> <p>2 A. Usually; yes.</p> <p>3</p> <p>13 <b>Q. All right. Both Mr. Certo and Mr. Varieur continue to be employed by Walmart today?</b></p> <p>14 A. I'm not sure about Mr. Varieur.</p> <p>15 <b>Q. Now, last exhibit here is -- or two -- Exhibit No. 32, is Tau, Andy Tau.</b></p> <p>16 <b>You're familiar with Pharmacist Andy Tau?</b></p> <p>17 <b>(Exhibit P-32, Tau transfer approval, 12/21/12, 2590.)</b></p> <p>18 <b>(Exhibit P-33, Tau coaching, 2624-2627.)</b></p> <p>19 A. Vaguely.</p> <p>20 <b>Q. And Exhibit No. 32 is actually your approving the</b></p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">126</p> <p>14 <b>Q. And another example is the "intentional failure to follow Walmart policy.</b></p> <p>15 <b>Did I read that correctly?</b></p> <p>16 A. Yeah. Well, that can be anything.</p> <p>17 <b>Q. All right. So if Mr. Certo, for example, just for purposes of this question, is asked to investigate a HIPAA violation and he intentionally fails to investigate a reported HIPAA violation, that would be a violation -- intentional violation, right, if that happened?</b></p> <p>18 A. That would be intentional; yes.</p>	<p style="text-align: right;">128</p> <p>1 <b>transfer of Mr. Tau to the Plaistow, New Hampshire pharmacy in December 2012.</b></p> <p>2 <b>Do you see that?</b></p> <p>3 A. Yes. I approved his hire.</p> <p>4 <b>Q. You approved his hire. And that's just about a month after Ms. McPadden gets fired; right?</b></p> <p>5 A. I guess; yeah.</p> <p>6 <b>Q. December 21st. She's fired on December 27th -- November 27th.</b></p> <p>7 <b>And then I'll show you what's been marked as Exhibit 3.</b></p> <p>8 <b>(Exhibit P-3, previously marked.)</b></p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>16 <b>Q. And this is a coaching of Mr. Tau for accidentally losing his pharmacy key.</b></p> <p>17 <b>Do you see that?</b></p> <p>18 A. (Witness reviews document.) Yes.</p> <p>19 <b>Q. So on December 14th, 2012, just a little over a year after Ms. McPadden lost her key, Mr. Tau, in New Hampshire, a male pharmacist, accidentally lost his key; right?</b></p> <p>20 A. No. It was 2013.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>



<p style="text-align: right;">129</p> <p>1 <b>Q. I'm sorry. So he lost it in 2013. A year after</b>  2 <b>McPadden.</b>  3 A. Yes.  4 <b>Q. And Mr. Tau received a first-level coaching;</b>  5 <b>correct?</b>  6 MR. KACZMAREK: Objection.  7 A. (Witness reviews document.) I believe so -- by  8 Loreen Riel.  9 <b>Q. And Loreen Riel is Mr. Certo's level; right? Mr.</b>  10 <b>Certo is a market director. Loreen Riel was the</b>  11 <b>market director. And Ms. Riel issues a</b>  12 <b>first-level coaching to Mr. Tau; correct?</b>  13 A. I believe so; yes.  14 <b>Q. There's no evidence that you know of that Ms. Riel</b>  15 <b>consulted regional; correct?</b>  16 A. Well, I was on maternity leave at the time, so she  17 wouldn't have consulted me.  18 <b>Q. Yeah. But is there any evidence, to your</b>  19 <b>knowledge, that she consulted regional --</b>  20 <b>whatever, a regional director with respect to the</b>  21 <b>decision to issue a one-level coaching?</b>  22 A. I don't recall at this time who she --  23 <b>Q. Mrs. Tau was allowed to actually go home and that</b>  24 <b>pharmacy was not rekeyed for two days.</b></p>	<p style="text-align: right;">131</p> <p>1 MR. FRADETTE: All right. I have  2 nothing further at this time. Thank you.  3 MR. KACZMAREK: With counsel's  4 permission, we've been at it for a while. I think  5 it's an appropriate time to take a quick break for  6 everyone, and we can instruct the witness that  7 she's not to have any contact with counsel during  8 a break.  9 MR. FRADETTE: Thank you very much.  10 That's fine.  11 MR. KACZMAREK: Thank you. We're off  12 the record.  13 VIDEO OPERATOR: The time is 4:07 p.m.;  14 and we are off the record.  15 (Recess was taken.)  16 (Exhibit D-1, WALMART  17 (C McPadden) 002676.)  18 VIDEO OPERATOR: The time is 4:15 p.m.,  19 and we are on the record.  20 EXAMINATION  21 BY MR. KACZMAREK:  22 <b>Q. Good afternoon, Ms. McCaffrey.</b>  23 <b>I wanted to start things off by asking</b>  24 <b>you, could you explain to the jury why they're</b></p>
<p style="text-align: right;">130</p> <p>1 <b>Are you aware of that?</b>  2 A. No. Like I said, I was on maternity, so I wasn't  3 part of this.  4 <b>Q. And in Mr. Tau's case, if you look at Bates 2625,</b>  5 <b>although he lost the key on December 14th, he's</b>  6 <b>not coached until December 19th -- five days</b>  7 <b>later. There was no --</b>  8 A. He might not have been working.  9 <b>Q. Well, if Mr. Tau testifies that he came to work</b>  10 <b>two days after he lost the key, he would have been</b>  11 <b>working for at least a few days -- couple of</b>  12 <b>days -- before being coached; right?</b>  13 A. It's possible; yeah.  14 <b>Q. And is it your experience that Walmart calls</b>  15 <b>people in -- even when they're not working -- if</b>  16 <b>they intend to coach individuals?</b>  17 A. Not usually.  18 <b>Q. But that does happen.</b>  19 A. It can.  20 <b>Q. And referring to Exhibit No. 32, again, which is</b>  21 <b>the authorization to -- your approval of hiring</b>  22 <b>Mr. Tau, Mr. Certo is copied on that, as well as</b>  23 <b>Ms. Riel; correct?</b>  24 A. Yes.</p>	<p style="text-align: right;">132</p> <p>1 <b>seeing you through videotape, as opposed to being</b>  2 <b>live at trial?</b>  3 A. So I am due with my second baby in about two  4 weeks. So I won't be here for the trial.  5 <b>Q. You'll be here in Rhode Island --</b>  6 A. I will be here in Rhode Island, but I will not be  7 at the trial.  8 <b>Q. Are you expecting to take a leave of absence</b>  9 <b>after you give birth?</b>  10 A. I am; yes.  11 <b>Q. And about how long will that leave of absence</b>  12 <b>last?</b>  13 A. Probably about 13 to 15 weeks.  14 <b>Q. So certainly through the end of January and</b>  15 <b>probably longer.</b>  16 A. Probably end of February; yeah.  17 <b>Q. Is this the first leave of absence that you've</b>  18 <b>taken from Walmart?</b>  19 A. No.  20 <b>Q. Did you take a leave of absence when your first</b>  21 <b>child was born?</b>  22 A. Yes. I've had, actually, two leaves of absence  23 with Walmart.  24 <b>Q. Two leave of absences, not including the one that</b></p>

<p style="text-align: right;">133</p> <p>1        <b>you're about to take?</b></p> <p>2        A.    Correct.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">135</p> <p>1        A.    I had two different ones.</p> <p>2        <b>Q.    Who were they?</b></p> <p>3        A.    I had Emily Almeida and Paresch Patel.</p> <p>4        <b>Q.    Did they both have the same job title?</b></p> <p>5        A.    Yes.</p> <p>6        <b>Q.    And what was that?</b></p> <p>7        A.    Divisional health and wellness director.</p> <p>8        <b>Q.    And while you were the regional health and</b></p> <p>9        <b>wellness director, did you directly supervise any</b></p> <p>10       <b>associates?</b></p> <p>11       A.    Yes.</p> <p>12       <b>Q.    What were the job titles of the associates that</b></p> <p>13       <b>you directly supervised?</b></p> <p>14       A.    I had the market directors and I had a health and</p> <p>15       wellness coordinator.</p> <p>16       <b>Q.    Approximately how many associates did you directly</b></p> <p>17       <b>supervise at any given time?</b></p> <p>18       A.    I had about ten.</p> <p>19       <b>Q.    And that included Joe Certo for a period of time?</b></p> <p>20       A.    Yes.</p> <p>21       <b>Q.    And Mr. Certo's title was market health and</b></p> <p>22       <b>wellness director; correct?</b></p> <p>23       A.    Yes.</p> <p>24       <b>Q.    And what sort of employees reported directly to</b></p>
<p style="text-align: right;">134</p> <p>4       <b>Q.    And you testified earlier that you're currently a</b></p> <p>5       <b>market manager; correct?</b></p> <p>6       A.    Yes.</p> <p>7       <b>Q.    And you've been in that position since March?</b></p> <p>8       A.    Since March.</p> <p>9       <b>Q.    And previously I believe you testified that you</b></p> <p>10       <b>were a regional health and wellness director; is</b></p> <p>11       <b>that right?</b></p> <p>12       A.    Yes.</p> <p>13       <b>Q.    And what was the geographic scope of your</b></p> <p>14       <b>responsibilities as a regional health and wellness</b></p> <p>15       <b>director?</b></p> <p>16       A.    When I first had the job, I just had Massachusetts</p> <p>17       and a little of southern New Hampshire, and then</p> <p>18       my region expanded to Maine, New Hampshire,</p> <p>19       Vermont, Mass., and Rhode Island.</p> <p>20       <b>Q.    And at least for some period of time your</b></p> <p>21       <b>responsibilities included the Seabrook pharmacy.</b></p> <p>22       A.    I had them the entire time; yes.</p> <p>23       <b>Q.    And while you were the regional health and</b></p> <p>24       <b>wellness director, who was your direct supervisor?</b></p>	<p style="text-align: right;">136</p> <p>1       <b>him?</b></p> <p>2       A.    The pharmacy managers and division center managers</p> <p>3       reported directly to him.</p> <p>4       <b>Q.    And who did the pharmacy managers directly</b></p> <p>5       <b>supervise?</b></p> <p>6       A.    The staff pharmacists, hourly pharmacists,</p> <p>7       technicians, cashiers, OTC manager.</p> <p>8       <b>Q.    Essentially the pharmacy manager supervised</b></p> <p>9       <b>everyone who worked in the pharmacy?</b></p> <p>10       A.    Yes.</p> <p>11       <b>Q.    When Attorney Fradette asked you some questions,</b></p> <p>12       <b>there was some testimony about health and wellness</b></p> <p>13       <b>and division 1. And I want to explore that</b></p> <p>14       <b>distinction a little bit.</b></p> <p>15       <b>What areas of Walmart's business does</b></p> <p>16       <b>the health and wellness division cover?</b></p> <p>17       A.    Health and wellness covers pharmacy, vis on</p> <p>18       center, and, then, if you have any clinics --</p> <p>19       which we don't around here -- but that would be</p> <p>20       the health and wellness division.</p> <p>21       <b>Q.    And you're no longer in the health and wellness</b></p> <p>22       <b>division; correct?</b></p> <p>23       A.    Correct.</p> <p>24       <b>Q.    You're now a division 1 market manager?</b></p>

<p style="text-align: right;">137</p> <p>1 A. Yes.</p> <p>2 <b>Q. And what -- in Walmart, what does division 1 refer</b></p> <p>3 <b>to.</b></p> <p>4 A. So division 1 is entire store. So I oversee the</p> <p>5 entire store for Walmart for all of Rhode Island.</p> <p>6 <b>Q. So you're essentially responsible for managing all</b></p> <p>7 <b>the stores in Rhode Island?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. And who's responsible for overseeing the</b></p> <p>10 <b>pharmacies for the stores in Rhode Island?</b></p> <p>11 A. I have a market health and wellness director who</p> <p>12 oversees them.</p> <p>13 <b>Q. And approximately how many stores are there in</b></p> <p>14 <b>Rhode Island?</b></p> <p>15 A. Nine.</p> <p>16 <b>Q. And to whom do you report now?</b></p> <p>17 A. The regional general manager, who is Glenn</p> <p>18 Spencer.</p> <p>19 <b>Q. And that's within the division 1 reporting</b></p> <p>20 <b>structure?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. And division 1 has its own separate hierarchy, if</b></p> <p>23 <b>you will?</b></p> <p>24 A. Correct.</p>	<p style="text-align: right;">139</p> <p>1 personnel staff, and your pharmacist staff.</p> <p>2 As -- toward the end, we transitioned</p> <p>3 over to S3G, store-specific guidelines, which have</p> <p>4 multiple factors that come into play, and it's --</p> <p>5 it's specific to that store.</p> <p>6 So no given store would have the same</p> <p>7 guideline. It's all based on different criteria</p> <p>8 of that store on how it was staffed -- still based</p> <p>9 on prescription volume primarily.</p> <p>10 <b>Q. And within any given pharmacy, was there always a</b></p> <p>11 <b>pharmacy manager, a staff pharmacist, and at least</b></p> <p>12 <b>one technician?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. And were there any other job titles of associates</b></p> <p>15 <b>who work within a pharmacy?</b></p> <p>16 A. Yeah. There could be an hourly -- an hourly staff</p> <p>17 pharmacist. There could be an assistant pharmacy</p> <p>18 manager, could be a certified technician, a</p> <p>19 pharmacy cashier.</p> <p>20 I think that's about it.</p> <p>21 <b>Q. And within the pharmacy, what was the role of the</b></p> <p>22 <b>pharmacy technician?</b></p> <p>23 A. They're supportive personnel to the pharmacists.</p> <p>24 So they would take in a prescription, input the</p>
<p style="text-align: right;">138</p> <p>1 <b>Q. Its own reporting structure?</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. And are there some policies that are unique to</b></p> <p>4 <b>division 1?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And are there some policies that are unique to</b></p> <p>7 <b>health and wellness?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. And is it also true that there are some policies</b></p> <p>10 <b>that are universal, that govern both division 1</b></p> <p>11 <b>and health and wellness?</b></p> <p>12 A. Yes.</p> <p>14 <b>When you were the regional director for</b></p> <p>15 <b>the health and wellness division, were there any</b></p> <p>16 <b>guidelines with respect to how Walmart staffed its</b></p> <p>17 <b>pharmacies?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. And can you describe those generally for me.</b></p> <p>20 A. So they changed throughout the years. We</p> <p>21 originally had coverage guidelines when I started,</p> <p>22 and that was based on prescription volume. As</p> <p>23 your prescription volume grew, you would increase</p> <p>24 in your -- your technician, your supportive</p>	<p style="text-align: right;">140</p> <p>1 prescription, count the prescription, cash out</p> <p>2 a -- a patient. Now they can -- they can bag</p> <p>3 prescriptions.</p> <p>17 <b>Q. Now, when you were in the health and wellness</b></p> <p>18 <b>division, you testified earlier that part of your</b></p> <p>19 <b>responsibilities included directly supervising</b></p> <p>20 <b>some associates; correct?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. Did you have a role in disciplining those</b></p> <p>23 <b>associates?</b></p> <p>24 A. Yes.</p>

<p style="text-align: right;">141</p> <p>1 <b>Q. And there was some discussion when you were asked</b>  2 <b>by Attorney Fradette about the Coaching for</b>  3 <b>Improvement policy, and you recall just talking</b>  4 <b>about that just a few minutes ago; right?</b>  5 A. Yes.  6 <b>Q. And you talked about what a coaching is.</b>  7 <b>Are there different levels of coaching</b>  8 <b>within Walmart?</b>  9 A. Yes.  10 <b>Q. And is it permissible, under Walmart policy, to</b>  11 <b>skip a coaching level?</b>  12 A. Yes.  13 <b>Q. And how does one decide whether or not to skip a</b>  14 <b>coaching level?</b>  15 A. It's based on the -- the infraction.  16 <b>Q. But who decides whether to skip a level?</b>  17 A. It's typically the -- the associate's manager, or,  18 you know, next-level supervisor. So in this case  19 with the market director, if they're not sure,  20 they would come to me, and then I would help them,  21 you know, w th HR, if I needed their assistance as  22 well.  23 <b>Q. So in the first instance, is it -- is it true that</b>  24 <b>the manager issuing the discipline can decide</b></p>	<p style="text-align: right;">143</p> <p>1 <b>Q. Do you recall how you learned that Ms. -- Ms.</b>  2 <b>McPadden had lost her key to the pharmacy?</b>  3 A. Joe -- I believe Joe had sent me an email that she  4 had lost her key.  5 <b>Q. I'm going to hand you what we've marked as</b>  6 <b>Defendant's Exhibit 1.</b>  7 <b>Do you recognize that document?</b>  8 A. Yes.  9 <b>Q. What is it?</b>  10 A. It's an email from Joe to myself, asking if there  11 is accountabil ty if a pharmacist loses their key.  12 <b>Q. And is this the far -- is this the email that</b>  13 <b>alerted you to the fact that Ms. McPadden had lost</b>  14 <b>her key?</b>  15 A. Yes, I believe so.  16 <b>Q. You didn't respond to this email with another</b>  17 <b>email.</b>  18 A. No. I called him.  19 <b>Q. Why didn't you respond by email?</b>  20 A. It's just easier to call him on the phone than go  21 back and forth via email. I could get the  22 information I needed from him.  23 <b>Q. And the email is dated November 26, 2012; correct?</b>  24 A. Yes.</p>
<p style="text-align: right;">142</p> <p>1 <b>whether to skip a level?</b>  2 A. Yes.  3 <b>Q. But if he or she is not sure whether that's</b>  4 <b>appropriate, they could escalate it to someone</b>  5 <b>higher up in the hierarchy?</b>  6 A. They could. And if the associate doesn't agree  7 w th the level of discipline, they can always use  8 the open door policy and -- and talk to that  9 person's supervisor and -- and challenge t.  10 <b>Q. And in your experience, does every Walmart policy</b>  11 <b>specify the level of coaching that an associate</b>  12 <b>should receive for violating that policy?</b>  13 A. No, we couldn't.  14 <b>Q. When you say you couldn't, what do you mean?</b>  15 A. The list would be way too long.  16 <b>Q. You testified earlier that you met the Plaintiff</b>  17 <b>in this case, Maureen McPadden, on a few</b>  18 <b>occasions.</b>  19 A. Yes.  20 <b>Q. Those are times when you visited the Seabrook</b>  21 <b>pharmacy?</b>  22 A. Yes.  23 <b>Q. Did you ever directly supervise her?</b>  24 A. No.</p>	<p style="text-align: right;">144</p> <p>1 <b>Q. Do you recall how long Joe Certo had been in his</b>  2 <b>role as market health and wellness director as of</b>  3 <b>November 26, 2012?</b>  4 A. I don't remember.  5 <b>Q. In this email Mr. Certo refers to</b>  6 <b>"accountability." He specifically says "Is there</b>  7 <b>accountability on that?"</b>  8 <b>When you got this email, did you have a</b>  9 <b>sense of what he meant by that?</b>  10 A. He was referring to coaching.  11 <b>Q. So when -- your belief is that when he said</b>  12 <b>"accountability," he was referring to coaching?</b>  13 A. Yeah. We use that word interchangeably a lot of  14 times.  15 <b>Q. Did Mr. Certo have the authority to discipline Ms.</b>  16 <b>McPadden on his own?</b>  17 A. Yes.  18 <b>Q. He didn't have to contact you?</b>  19 A. No. Actually, the pharmacy manager could have  20 held her accountable. It d dn't even have to be  21 Joe.  22 <b>Q. And Mr. Certo had the authority to discipline Ms.</b>  23 <b>McPadden, even if that discipline was her</b>  24 <b>termination?</b></p>

<p style="text-align: right;">145</p> <p>1 A. Yes.</p> <p>2 <b>Q. Do you recall the phone call that you had with</b></p> <p>3 <b>Joseph Certo after you received this email?</b></p> <p>4 A. I do, vaguely.</p> <p>5 <b>Q. What do you -- and what do you recall about that</b></p> <p>6 <b>phone call?</b></p> <p>7 A. He told me when she was moving, she lost her key.</p> <p>8 She d dn't really take it very ser ously. He told</p> <p>9 her to go home and look for t. She couldn't find</p> <p>10 it. And so he asked me, Well, what do I do at</p> <p>11 this point?</p> <p>12 <b>Q. And what did you say during that phone call with</b></p> <p>13 <b>Mr. Certo?</b></p> <p>14 A. I told him we need to put a call together with</p> <p>15 Barb Kulwicki so that we could discuss the</p> <p>16 accountability piece of it.</p> <p>17 <b>Q. Now, you, as Joe Certo's direct supervisor at the</b></p> <p>18 <b>time, you certainly had the authority to tell Mr.</b></p> <p>19 <b>Certo what you believe should be the appropriate</b></p> <p>20 <b>discipline; correct?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. And he would have had to listen to you?</b></p> <p>23 A. He wouldn't have to listen to me. It would be a</p> <p>24 good -- good dea on his part. But, yeah, I</p>	<p style="text-align: right;">147</p> <p>1 <b>Q. And there was some testimony about that earlier.</b></p> <p>2 <b>You don't recall whether Joe Certo was on that</b></p> <p>3 <b>phone call.</b></p> <p>4 A. I don't remember specif cally, no.</p> <p>5 <b>Q. It's possible that he was?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. As you sit here today, do you remember whether Mr.</b></p> <p>8 <b>Certo said anything during that phone call?</b></p> <p>9 A. I don't know.</p> <p>11 <b>Q. What do you recall discussing during that phone</b></p> <p>12 <b>call with Barbara Kulwicki?</b></p> <p>13 A. I remember telling Barb the situation of what</p> <p>14 happened, referencing Susan Carroll, referencing,</p> <p>15 you know, what we're going to do next; and then we</p> <p>16 came up with an accountabil ty at that point.</p> <p>17 <b>Q. And what accountability did you come up with?</b></p> <p>18 A. A second-level coaching.</p> <p>19 <b>Q. All right. Whose decision was it that Ms.</b></p> <p>20 <b>McPadden should receive a second-level coaching?</b></p> <p>21 A. I don't remember if it was Barb or myself, but I</p> <p>22 think collectively we decided that a second level</p> <p>23 was appropriate.</p> <p>24 <b>Q. Did Joe Certo ever tell you that he had solicited</b></p>
<p style="text-align: right;">146</p> <p>1 didn't have to confer with Barb. I just d d it</p> <p>2 for consistency purposes.</p> <p>3 <b>Q. What do you mean that you had to confer with</b></p> <p>4 <b>Barbara Kulwicki for consistency purposes?</b></p> <p>5 A. So because, you know, obviously, I had a broader</p> <p>6 scope than Joe does. She has a broader scope than</p> <p>7 me, because she had -- she was in the divis onal</p> <p>8 level, and she had the entire eastern seaboard.</p> <p>9 So she knew on a broad level the accountabil ty</p> <p>10 that would have happened on larger scale stores</p> <p>11 than I did.</p> <p>12 <b>Q. Did you think there was any need to investigate</b></p> <p>13 <b>Ms. McPadden's loss of her key?</b></p> <p>15 A. No. Joe had the information that I needed.</p> <p>16 <b>Q. What was that information?</b></p> <p>17 A. He had spoken w th her. She freely admitted that</p> <p>18 she lost her key. She sent it to him in an email.</p> <p>19 And so there was really not much more to look</p> <p>20 into.</p> <p>21 <b>Q. And you had a follow-up phone call with Barbara</b></p> <p>22 <b>Kulwicki; correct?</b></p> <p>24 A. Yes.</p>	<p style="text-align: right;">148</p> <p>1 <b>and received opinions from other Walmart employees</b></p> <p>2 <b>regarding whether Ms. McPadden should receive</b></p> <p>3 <b>discipline?</b></p> <p>5 A. No.</p> <p>6 <b>Q. As you sit here today, you've heard -- you've been</b></p> <p>7 <b>asked questions by Attorney Fradette about the</b></p> <p>8 <b>email exchange between Joe Certo and those</b></p> <p>9 <b>individuals.</b></p> <p>10 <b>Do you recall that?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. And do you recall -- you were told, rather, what</b></p> <p>13 <b>those other managers told Mr. Certo.</b></p> <p>14 <b>Do you recall that?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. As you sit here today, to you think your decision</b></p> <p>17 <b>would have been any different if you had known</b></p> <p>18 <b>that information?</b></p> <p>21 A. No.</p>

<p style="text-align: right;">149</p> <p>5 <b>Q. And the individuals with whom Mr. Certo was emailing, those were division 1 employees?</b></p> <p>6</p> <p>7 A. Yes.</p> <p>8 <b>Q. I now you've got a large stack of documents that Attorney Fradette showed you, I'd like you to find for me Plaintiff's Exhibit 15, please. It's the health and wellness Professional Accountability Matrix.</b></p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 A. (Witness reviews document.) All right.</p> <p>14 <b>Q. Was there any discussion of the accountability matrix during your telephone call with Barbara Kulwicki?</b></p> <p>15</p> <p>16</p> <p>17 A. I believe there was; yes.</p> <p>18 <b>Q. Do you recall who brought it up?</b></p> <p>19 A. I don't.</p> <p>20 <b>Q. Do you recall what was discussed regarding the matrix?</b></p> <p>21</p> <p>22 A. I don't.</p> <p>23 <b>Q. Does the matrix specify -- strike that.</b></p> <p>24 <b>Attorney Fradette asked you some</b></p>	<p style="text-align: right;">151</p> <p>1 <b>Q. And is it possible that the coaching could be a second-level coaching?</b></p> <p>2</p> <p>3</p> <p>4 A. It could be; yes. It could be a third level.</p> <p>5 <b>Q. I know you got asked a lot of questions about security of the pharmacy.</b></p> <p>6</p> <p>7 <b>Can you tell me why it is that's</b></p> <p>8 <b>important to keep the pharmacy secure, in your opinion?</b></p> <p>9</p> <p>10 A. You want to make sure that patient' informat on is kept secure. You want to make sure that there is no divers on of medications, and just for associate safety, in general, as well.</p> <p>11</p> <p>12</p> <p>13</p> <p>14 <b>Q. And when you say "diversion" what do you mean?</b></p> <p>15 A. Theft of pills.</p> <p>16 <b>Q. Is that a concern at Walmart's pharmacies?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. Is it a concern at all pharmacies, to the best of your knowledge?</b></p> <p>19</p> <p>20</p> <p>21 A. Yes.</p> <p>22 <b>Q. What kinds of drugs are kept in the pharmacy that you might be concerned about someone stealing?</b></p> <p>23</p> <p>24 A. Specifically controlled substance.</p>
<p style="text-align: right;">150</p> <p>1 <b>questions about the different columns on the matrix. There was a column for infractions, a column that references policies, and then a column that references -- it says "First Offense."</b></p> <p>2</p> <p>3</p> <p>4 <b>Do you see that?</b></p> <p>5</p> <p>6 A. Yes.</p> <p>7 <b>Q. And there are some things that are labeled "Termination for first offense" and some that say you should receive a coaching for first offense; is that right?</b></p> <p>8</p> <p>9</p> <p>10</p> <p>11 A. Yes.</p> <p>12 <b>Q. Does the accountability matrix specify what level of coaching one should receive for these different offenses?</b></p> <p>13</p> <p>14</p> <p>15 A. This one doesn't. The newer one does. But t's -- it's all based on the situation as well.</p> <p>16</p> <p>17 So it can -- this is the minimum that would happen.</p> <p>18</p> <p>19 <b>Q. So if the matrix said "coaching" for a first offense, that would -- you read that to be the minimum discipline that someone would receive for that offense would be a coaching.</b></p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 A. Yes.</p>	<p style="text-align: right;">152</p> <p>1 <b>Q. Such as?</b></p> <p>2 A. Xanax, Vicodin, Valium. There's a lot of different drugs of choice out there.</p> <p>3</p> <p>4 <b>Q. And at Walmart's pharmacy -- specifically the pharmacy in Seabrook, there's an alarm; correct?</b></p> <p>5</p> <p>6 A. Yes.</p> <p>7 <b>Q. And there's also a key to get into the pharmacy. The pharmacy is locked; correct?</b></p> <p>8</p> <p>9 A. Yes.</p> <p>10 <b>Q. And when you were a pharmacist -- a practicing pharmacist with Walmart, did you have a key to your pharmacy?</b></p> <p>11</p> <p>12 A. I d d.</p> <p>13</p> <p>14 <b>Q. Were you ever given any instructions on what to do with your key?</b></p> <p>15</p> <p>16 A. Yes.</p> <p>17 <b>Q. What were you told?</b></p> <p>18 A. Keep t on you at all times.</p> <p>19 <b>Q. Were you told why?</b></p> <p>20 A. To keep the pharmacy secure and not give anyone access that shouldn't have t.</p> <p>21</p> <p>22 <b>Q. When you first learned that Maureen McPadden had lost her pharmacy key, were you surprised?</b></p> <p>23</p>

<p style="text-align: right;">153</p> <p>1 A. It was the first time that I had a pharmacist lose 2 their key. So I was a little surprised.</p> <p>3 <b>Q. Had you ever heard of a pharmacist anywhere ever</b> 4 <b>losing their key?</b></p> <p>5 A. No, not at that point.</p> <p>6 <b>Q. Before you spoke with Barbara Kulwicki regarding</b> 7 <b>the Maureen McPadden situation, did you form any</b> 8 <b>thoughts in your own mind as to what the</b> 9 <b>appropriate level of discipline might be for Ms.</b> 10 <b>McPadden?</b></p> <p>11 A. Yes. I had a two-level in my head because of what 12 happened with Susan Carroll.</p> <p>13 <b>Q. But Susan Carroll, she wasn't a pharmacist;</b> 14 <b>correct?</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. And she obviously didn't lose her pharmacy key.</b> 17 <b>Why did you find those two situations to</b> 18 <b>be comparable?</b></p> <p>20 A. She was a vision center manager. She was a 21 licensed optician. She had similar PHI and HIPAA 22 and -- not necessarily drugs, but they had contact 23 lenses and other things that were prescribed 24 things in their labs. And so it was a similar</p>	<p style="text-align: right;">155</p> <p>1 the potential of it being unsecured. So, you 2 know, that was one of them.</p> <p>3 The other thing, you know, Joe felt that 4 she was taking it very -- not seriously, like it 5 wasn't a big deal. And so, because of that, you 6 know, we wanted to make sure that, you know, she 7 was held accountable appropriately.</p> <p>8 <b>Q. What did Joe Certo tell you that made you think</b> 9 <b>she wasn't taking it seriously?</b></p> <p>10 A. When he asked her, you know, "Do you know where it 11 is? Can you look for it?" She just was -- kind 12 of --like, "No. I don't know where it is."</p> <p>13 And he said, "Can you go home? Can you 14 try to find it?"</p> <p>15 He even gave her till the next day. He 16 said, "Can you go home? Can you try to find it?" 17 She just didn't really seem like it was an issue.</p> <p>18 <b>Q. During your conversation was Mr. Certo, did he</b> 19 <b>ever provide any recommendation regarding the</b> 20 <b>discipline of Ms. McPadden?</b></p> <p>21 A. I don't remember that he did; no.</p> <p>22 <b>Q. Did you ever -- and I take it that you never</b> 23 <b>talked about Ms. McPadden's coaching history with</b> 24 <b>Barbara Kulwicki; correct?</b></p>
<p style="text-align: right;">154</p> <p>1 situation.</p> <p>2 <b>Q. Without denigrating the folks in the vision</b> 3 <b>center, do you believe it's more important to keep</b> 4 <b>a pharmacy secure than a vision center secure?</b></p> <p>6 A. Of course.</p> <p>7 <b>Q. Why?</b></p> <p>8 A. Because, you know, if someone takes a pair of 9 glasses, they're not going to overdose on that.</p> <p>10 If someone, you know, breaks into a 11 pharmacy and takes medication, they could sell it 12 to children. They can take it themselves.</p> <p>13 There's a lot of things that can happen if they 14 get access to medication that they shouldn't have.</p> <p>15 <b>Q. But in this situation with Maureen McPadden, I</b> 16 <b>mean, there's -- there's certainly no suggestion</b> 17 <b>that anyone accessed the pharmacy while her key</b> 18 <b>was lost; correct?</b></p> <p>19 A. Correct.</p> <p>20 <b>Q. There's not even any suggestion that the alarm was</b> 21 <b>tripped while her key was missing; correct?</b></p> <p>22 A. Correct.</p> <p>23 <b>Q. So why discipline her?</b></p> <p>24 A. I think for two reasons: One, because we did have</p>	<p style="text-align: right;">156</p> <p>2 A. Correct.</p> <p>3 <b>Q. In your conversations with Barbara Kulwicki, did</b> 4 <b>you ever discuss Maureen McPadden's gender?</b></p> <p>5 A. No.</p> <p>6 <b>Q. Did you ever discuss her medical condition?</b> 7 A. No.</p> <p>8 <b>Q. Were you even aware of her medical condition at</b> 9 <b>the time?</b></p> <p>10 A. No.</p> <p>11 <b>Q. Did you ever -- in your conversations with Barbara</b> 12 <b>Kulwicki, did you ever discuss the fact that</b> 13 <b>Maureen McPadden had taken a leave of absence?</b></p> <p>14 A. No. I don't think I even knew.</p> <p>15 <b>Q. In your conversations with Barbara Kulwicki, did</b> 16 <b>you ever discuss that Maureen McPadden had made</b> 17 <b>complaints about safety in the Seabrook pharmacy?</b></p> <p>18 A. No.</p> <p>19 <b>Q. At the time that you made the decision, were you</b> 20 <b>even aware of those complaints?</b></p> <p>21 A. No.</p> <p>22 <b>Q. In your conversations with Barbara Kulwicki, did</b> 23 <b>you discuss the fact that Maureen McPadden had</b> 24 <b>brought HIPAA concerns to the attention of Joe</b></p>

<p style="text-align: right;">157</p> <p>1       <b>Certo?</b></p> <p>2    A.   No. I didn't know about that either.</p> <p>3    <b>Q.   When you and Barbara Kulwicki decided to issue a</b></p> <p>4       <b>second-level coaching to Maureen McPadden, did you</b></p> <p>5       <b>know what, if any, consequences might flow from</b></p> <p>6       <b>that decision?</b></p> <p>8    A.   No. At the time I didn't know if she had any</p> <p>9       other coachings.</p> <p>10   <b>Q.   At some point did you learn that she had other</b></p> <p>11       <b>coachings?</b></p> <p>12   A.   Yes. Joe called me later and said that she had</p> <p>13       two previous coachings -- two separate coachings</p> <p>14       for different -- different things, and that this</p> <p>15       would lead to termination. But because we had</p> <p>16       already discussed it, you know, I'm not going to</p> <p>17       change it based on the outcome.</p>	<p style="text-align: right;">159</p> <p>1               <b>Do you recall those questions?</b></p> <p>2    A.   Yes.</p> <p>3    <b>Q.   Were you involved at all in the decision to</b></p> <p>4       <b>discipline Andy Tau?</b></p> <p>5    A.   No. I was on maternity leave.</p> <p>6    <b>Q.   When was that maternity leave?</b></p> <p>7    A.   October 6, 2013, until sometime in late January.</p> <p>8    <b>Q.   When did you first learn about the fact that Mr.</b></p> <p>9       <b>Tau had lost his pharmacy key?</b></p> <p>10   A.   When I was asked by one of the attorneys.</p> <p>11   <b>Q.   So it was after this lawsuit was filed?</b></p> <p>12   A.   Yes.</p>
<p style="text-align: right;">158</p> <p>4    <b>Q.   Did he have to come back and tell you that this</b></p> <p>5       <b>second-level coaching would result in her</b></p> <p>6       <b>termination?</b></p> <p>8    A.   No. He could have just terminated her.</p> <p>9    <b>Q.   And what did you tell Mr. Certo when he gave you</b></p> <p>10       <b>the information that her receiving this coaching</b></p> <p>11       <b>would result in her termination?</b></p> <p>12   A.   Unfortunately, you know, that's why we give an</p> <p>13       associate four levels to change their behavior if</p> <p>14       things are necessary. And because she had two</p> <p>15       previous coachings, that caused the termination,</p> <p>16       not this specifically.</p> <p>17       I don't even know what the other</p> <p>18       coachings were for.</p> <p>19   <b>Q.   Do you know who hired -- strike that.</b></p> <p>20       <b>Do you know who replaced Maureen</b></p> <p>21       <b>McPadden as the staff pharmacist?</b></p> <p>22   A.   I don't.</p> <p>23   <b>Q.   Attorney Fradette asked you some questions about a</b></p> <p>24       <b>pharmacist by the name of Andy Tau.</b></p>	<p style="text-align: right;">160</p> <p>20   <b>Q.   And you felt that POM-902 was also implicated by</b></p> <p>21       <b>Ms. McPadden's loss of her pharmacy key.</b></p> <p>22   A.   Yes.</p> <p>23   <b>Q.   And why is that?</b></p> <p>24   A.   Because it had to do with the prescription area</p>



<p style="text-align: right;">161</p> <p>1 security.</p> <p>2 <b>Q. Are nonpharmacists allowed to possess keys to the</b></p> <p>3 <b>pharmacy?</b></p> <p>4 A. No.</p> <p>5 <b>Q. Is that a Walmart rule?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. Is it also a legal requirement of some kind, to</b></p> <p>8 <b>your knowledge?</b></p> <p>9 A. I don't know if it's a legal; I know it's</p> <p>10 Walmart's policy.</p> <p>11 <b>Q. Now, Attorney Fradette also asked you some</b></p> <p>12 <b>questions about the company's HIPAA policy.</b></p> <p>13 <b>Do you recall that?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. And that's in Exhibit 24, if you can find that for</b></p> <p>16 <b>me, please. I know we have a lot of papers.</b></p> <p>17 A. Should have put these in order. (Witness reviews</p> <p>18 document.) Okay.</p> <p>19 <b>Q. Now, a HIPAA policy identifies ways in which</b></p> <p>20 <b>employees -- who are referred to as "associates"</b></p> <p>21 <b>in Walmart -- can raise concerns about potential</b></p> <p>22 <b>HIPAA violations; correct?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. And what are the ways that the policy says an</b></p>	<p style="text-align: right;">163</p> <p>1 <b>I've been retaliated against, can I call the</b></p> <p>2 <b>ethics hotline?</b></p> <p>3 A. Yes. That's what it's there for.</p>
<p style="text-align: right;">162</p> <p>1 <b>associate can use to raise a HIPAA concern?</b></p> <p>2 A. They can let a salaried member of management know,</p> <p>3 or they can call into the ethics hot -- hotline</p> <p>4 which is also posted in every pharmacy.</p> <p>5 <b>Q. Is that a toll free number?</b></p> <p>6 A. Yes. I believe so.</p> <p>7 <b>Q. And is the -- is the number actually referenced in</b></p> <p>8 <b>the HIPAA policy?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. Where?</b></p> <p>11 A. It's under "Reporting a Violation" or "Retaliation</p> <p>12 for Reporting."</p> <p>13 <b>Q. Down at the bottom of the first page?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. The ethics hotline, is that a number that</b></p> <p>16 <b>associates can use to raise concerns other than</b></p> <p>17 <b>potential HIPAA violations?</b></p> <p>18 A. Yes. They can -- they can raise any concern they</p> <p>19 have, and they can also do it anonymously.</p> <p>20 <b>Q. So if I believe -- if I'm a Walmart associate and</b></p> <p>21 <b>I believe that I've been discriminated against, I</b></p> <p>22 <b>can call the ethics hotline?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. And if I'm a Walmart associate and I believe that</b></p>	<p style="text-align: right;">164</p> <p>1 <b>Q. Do you recall when Ms. Riel replaced Joe Certo as</b></p> <p>2 <b>his manager?</b></p> <p>3 A. I don't.</p> <p>4 <b>Q. You were --</b></p> <p>5 A. These were done in March, though. Sometime around</p> <p>6 March, if not before.</p> <p>7 <b>Q. All right. You were involved, to a certain</b></p> <p>8 <b>degree, in the decision for Mr. Varieur to step</b></p> <p>9 <b>down; correct?</b></p> <p>10 A. I wasn't -- I didn't have a conversation with Josh</p> <p>11 specifically, but I was consulted by Loreen on</p> <p>12 what to do with the situation.</p> <p>13 <b>Q. Did you have any conversations with Joe Certo</b></p> <p>14 <b>about that situation?</b></p> <p>15 A. I don't remember.</p> <p>16 <b>Q. And moving back just briefly to Andy Tau, I know</b></p> <p>17 <b>you were not involved in the decision to</b></p> <p>18 <b>terminate -- strike that -- the decision to</b></p> <p>19 <b>discipline Andy Tau. Do you have any reason to</b></p> <p>20 <b>believe that Joe Certo was involved in that</b></p> <p>21 <b>decision?</b></p> <p>23 A. No. He wouldn't have been.</p> <p>24 <b>Q. Why not?</b></p>

<p style="text-align: right;">165</p> <p>1 A. Because Loreen was the market director at the</p> <p>2 time, and Pam Dechelis was covering for me while I</p> <p>3 was on maternity. So he wouldn't have been</p> <p>4 involved in that.</p> <p>5 <b>Q. Was there ever any doubt in your mind that Maureen</b></p> <p>6 <b>McPadden deserved to be coached for her loss of</b></p> <p>7 <b>her pharmacy key?</b></p> <p>9 A. No.</p> <p>10 <b>Q. Did you decide to discipline Ms. McPadden because</b></p> <p>11 <b>of her gender?</b></p> <p>12 A. No.</p> <p>13 <b>Q. And did you decide to discipline her because she</b></p> <p>14 <b>went on a leave of absence?</b></p> <p>15 A. No.</p> <p>16 <b>Q. Did you decide to discipline her because of her</b></p> <p>17 <b>medical condition?</b></p> <p>18 A. No.</p> <p>19 <b>Q. Did you decide to discipline her because she had</b></p> <p>20 <b>complained about safety issues?</b></p> <p>21 A. No.</p> <p>22 <b>Q. Did you decide to discipline her because she had</b></p> <p>23 <b>raised HIPAA concerns?</b></p> <p>24 A. No.</p>	<p style="text-align: right;">167</p> <p>1 <b>instruct, in its policies, that a second-level</b></p> <p>2 <b>coaching should be given; correct?</b></p> <p>3 A. No. If you read the bottom, again --</p> <p>4 <b>Q. I did read the bottom.</b></p> <p>5 A. Okay. So it says "Each infraction will be</p> <p>6 reviewed independently, and the level of</p> <p>7 discipline imposed may vary from the first offense</p> <p>8 column on the chart, depending on the severity of</p> <p>9 the infraction and other relevant circumstances."</p> <p>10 <b>Q. And on the policy that you're referring to where</b></p> <p>11 <b>it says "Minimum second-level coaching," that has</b></p> <p>12 <b>the same legend about it can vary -- what you just</b></p> <p>13 <b>read; correct?</b></p> <p>14 A. I don't know. I don't have that in front of me.</p> <p>15 <b>Q. But certainly you know that Walmart, when it</b></p> <p>16 <b>intends a second level coaching, you have seen</b></p> <p>17 <b>instances where it writes "Minimum second-level</b></p> <p>18 <b>coaching"; correct?</b></p> <p>19 A. Not always.</p> <p>20 <b>Q. Have you seen instances where, when Walmart</b></p> <p>21 <b>intends a second-level coaching, it writes</b></p> <p>22 <b>"Second-level coaching"?</b></p> <p>23 A. At minimum.</p> <p>24 <b>Q. Okay. So you have seen specific instances when</b></p>
<p style="text-align: right;">166</p> <p>1 MR. KACZMAREK: Thank you very much. I</p> <p>2 have no other questions. Attorney Fradette may.</p> <p>3 MR. FRADETTE: Thank you very much, Mr.</p> <p>4 Kaczmarek, and I do just have a couple of</p> <p>5 follow-ups.</p> <p>6 FURTHER EXAMINATION</p> <p>7 BY MR. FRADETTE:</p> <p>8 <b>Q. You mentioned on direct examination with Mr.</b></p> <p>9 <b>Kaczmarek that the health and wellness</b></p> <p>10 <b>Professional Accountability Matrix doesn't specify</b></p> <p>11 <b>the level of coaching for an alleged violation of</b></p> <p>12 <b>Exhibit -- of paragraph 11.</b></p> <p>13 <b>Do you remember that testimony?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. It does specify, however, that there would be</b></p> <p>16 <b>coaching.</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. And I think you went on to say that there's some</b></p> <p>19 <b>other policies that specifically say, for example,</b></p> <p>20 <b>two levels coaching or second-level coaching;</b></p> <p>21 <b>correct?</b></p> <p>22 A. This has been updated.</p> <p>23 <b>Q. All right. So when Walmart intends that a</b></p> <p>24 <b>coaching should be second level, it knows how to</b></p>	<p style="text-align: right;">168</p> <p>1 <b>they have -- "they," meaning Walmart -- has</b></p> <p>2 <b>written "Second-Level coaching minimum" in the</b></p> <p>3 <b>event you find an infraction of this particular</b></p> <p>4 <b>paragraph; correct?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. Okay. You testified that Mr. Certo told Maureen</b></p> <p>7 <b>to go home and find her key. Now, the decision to</b></p> <p>8 <b>issue the second-level coaching was made the same</b></p> <p>9 <b>day, within hours of her reporting the lost key;</b></p> <p>10 <b>correct?</b></p> <p>11 A. I don't remember when the conversation occurred.</p> <p>12 <b>Q. Well, we know from Mr. Certo's email to the group</b></p> <p>13 <b>that a decision had been made to issue a</b></p> <p>14 <b>second-level coaching on the same day that she</b></p> <p>15 <b>reported her lost key; correct?</b></p> <p>16 A. I believe so; yes.</p> <p>17 <b>Q. And, in fact, it was within hours of her having</b></p> <p>18 <b>reported the lost key; correct?</b></p> <p>19 A. Could be; yeah.</p> <p>20 <b>Q. All right. And, yet, he told her to go home and</b></p> <p>21 <b>find a key, and the store had already been</b></p> <p>22 <b>rekeyed; is that correct?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. And Ms. McPadden, in fact, went home and tried to</b></p>

<p style="text-align: right;">169</p> <p>1 <b>find the key.</b></p> <p>2 <b>Do you understand that that's the case?</b></p> <p>3 A. I believe she d d.</p> <p>4 <b>Q. And the very next morning, before her shift</b></p> <p>5 <b>started, she reported back to Mr. Certo that she</b></p> <p>6 <b>couldn't find the key; correct?</b></p> <p>7 A. I believe so.</p> <p>8 <b>Q. So she took it seriously; correct?</b></p> <p>9 A. Not originally.</p> <p>10 <b>Q. Well, that's what Mr. Certo told you.</b></p> <p>11 A. Correct.</p> <p>12 <b>Q. So you do recall some things that Mr. Certo told</b></p> <p>13 <b>you.</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. And you recall that he said to you that she -- in</b></p> <p>16 <b>his opinion, quote, "didn't take it seriously,"</b></p> <p>17 <b>close quote.</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. But you have no recollection of him telling you</b></p> <p>20 <b>that she had recently taken a two-week,</b></p> <p>21 <b>unscheduled medical leave of absence.</b></p> <p>22 A. He didn't tell me that.</p>	<p style="text-align: right;">171</p> <p>1 A. Correct.</p> <p>2 <b>Q. But you do recall he told you that she didn't take</b></p> <p>3 <b>it seriously?</b></p> <p>4 A. I do; yes.</p> <p>5 <b>Q. The ethics hotline, you testified, was something</b></p> <p>6 <b>that a person could call if they believed that</b></p> <p>7 <b>they had been retaliated against or discriminated</b></p> <p>8 <b>against; right?</b></p> <p>9 A. They can call for any reason.</p> <p>10 <b>Q. Right.</b></p> <p>11 A. It's an independent party that will investigate.</p> <p>12 <b>Q. And Ms. McPadden didn't know until the time that</b></p> <p>13 <b>she was actually fired that she was being fired;</b></p> <p>14 <b>correct?</b></p> <p>15 A. I don't know what she knew or didn't know.</p> <p>16 MR. FRADETTE: Thank you very much, Ms.</p> <p>17 McCaffrey. Appreciate you being here today.</p> <p>18 MR. KACZMAREK: Thank you very much for</p> <p>19 your time today. Good luck.</p> <p>20 THE WITNESS: Thanks.</p> <p>21 MR. KACZMAREK: Off the record.</p> <p>22 VIDEO OPERATOR: The time is 5 p.m. The</p> <p>23 deposition is concluded, and we are off the</p> <p>24 record.</p>
<p style="text-align: right;">170</p> <p>8 <b>Q. And you have no recollection -- or he didn't tell</b></p> <p>9 <b>you that she had filed a complaint about -- or had</b></p> <p>10 <b>reported a HIPAA violation.</b></p> <p>11 A. Correct.</p> <p>12 <b>Q. And you have no recollection of his telling you</b></p> <p>13 <b>about her repeated safety concerns -- the emails</b></p> <p>14 <b>that we saw earlier -- about the staffing</b></p> <p>15 <b>conditions and the experience of the technicians</b></p> <p>16 <b>in creating a public safety issue; correct?</b></p> <p>18 A. Like I said, we discussed Seabrook pharmacy</p> <p>19 specif cally, not Ms. -- Ms. McPadden.</p> <p>20 <b>Q. Okay. And then, again, you have no experience --</b></p> <p>21 <b>no recollection of him telling you that Ms.</b></p> <p>22 <b>McPadden had a disability or had been treated for</b></p> <p>23 <b>a -- specifically a disability, depression and --</b></p> <p>24 <b>and stress reaction; correct?</b></p>	<p style="text-align: right;">172</p> <p>1 (Whereupon the deposition ended at</p> <p>2 5:00 p.m.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

<p style="text-align: right;">173</p> <p>1 DEPONENT'S ERRATA SHEET</p> <p>2 AND SIGNATURE INSTRUCTIONS</p> <p>3</p> <p>4</p> <p>5 The original of the Errata Sheet has been</p> <p>6 delivered to Christopher Kaczmarek, Esq.</p> <p>7 When the Errata Sheet has been completed</p> <p>8 by the deponent and signed, a copy thereof should</p> <p>9 be delivered to each party of record and the</p> <p>10 ORIGINAL delivered to Richard Fradette, Esq. to</p> <p>11 whom the original deposition transcript was</p> <p>12 delivered.</p> <p>13</p> <p>14</p> <p>15 INSTRUCTIONS TO DEPONENT</p> <p>16</p> <p>17 After reading this volume of your</p> <p>18 deposition, indicate any corrections or changes to</p> <p>19 your testimony and the reasons therefor on the</p> <p>20 Errata Sheet supplied to you and sign it. DO NOT</p> <p>21 make marks or notations on the transcript volume</p> <p>22 itself.</p> <p>23</p> <p>24 REPLACE THIS PAGE OF THE TRANSCRIPT WITH THE</p> <p>COMPLETED AND SIGNED ERRATA SHEET WHEN RECEIVED.</p>	<p style="text-align: right;">175</p> <p>1 ATTACH TO DEPOSITION OF: HEATHER HARRIS McCAFFREY</p> <p>2 CASE: MCPADDEN vs. WAL-MART STORES EAST</p> <p>3</p> <p>4 ERRATA SHEET</p> <p>5 INSTRUCTIONS: After reading the transcript of</p> <p>6 your deposition, note any change or correction to</p> <p>7 your testimony and the reason therefor on this</p> <p>8 sheet. DO NOT make any marks or notations on the</p> <p>9 transcript volume itself. Sign and date this</p> <p>10 errata sheet (before a Notary Public, if</p> <p>11 required). Refer to page 173 of the transcript</p> <p>12 for errata sheet distribution instructions.</p> <p>13 PAGE LINE</p> <p>14 CHANGE: _____</p> <p>15 REASON: _____</p> <p>16 CHANGE: _____</p> <p>17 REASON: _____</p> <p>18 CHANGE: _____</p> <p>19 REASON: _____</p> <p>20 CHANGE: _____</p> <p>21 REASON: _____</p> <p>22 CHANGE: _____</p> <p>23 REASON: _____</p> <p>24 CHANGE: _____</p> <p>REASON: _____</p> <p>I have read the foregoing transcript</p> <p>of my deposition and except for any corrections or</p> <p>changes noted above, I hereby subscribe to the</p> <p>transcript as an accurate record of the statements</p> <p>made by me.</p> <p>HEATHER HARRIS McCAFFREY</p> <p>Subscribed and sworn to before me this</p> <p>_____ day of _____, 2015.</p> <p>Notary Public</p>
<p style="text-align: right;">174</p> <p>1 STATE OF RHODE ISLAND</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I, P. Jodi Ohnemus, Rhode Island</p> <p>6 Commissioner of Deeds, do hereby certify that</p> <p>7 there came before me on the 9th day of November,</p> <p>8 2015, the deponent herein, who was duly sworn by</p> <p>9 me; that the ensuing examination upon oath of the</p> <p>10 said deponent was reported stenographically by me</p> <p>11 and transcribed into typewriting under my</p> <p>12 direction and control; and that the within</p> <p>13 transcript is a true record of the questions asked</p> <p>14 and answers given at said deposition.</p> <p>15</p> <p>16 I FURTHER CERTIFY that I am neither</p> <p>17 attorney nor counsel for, nor related to or</p> <p>18 employed by any of the parties to the action</p> <p>19 in which this deposition is taken; and, further,</p> <p>20 that I am not a relative or employee of any</p> <p>21 attorney or financially interested in the outcome</p> <p>22 of the action.</p> <p>23</p> <p>24 IN WITNESS WHEREOF I have hereunto set</p> <p>my hand this 17th day of November, 2015.</p> <p>_____</p> <p>_____</p> <p>/s/ P. Jodi Ohnemus, RPR, RMR, CRR</p> <p>Rhode Island Commissioner</p> <p>of Deeds</p>	